

The **NORTH CAROLINA REGISTER**

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ISSUE DATE: FEBRUARY 1, 1991

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter sized, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue number and date. **1:1 NCR 101-201, April 1, 1980** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1980.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

*Publication Schedule
(April 1990 - December 1991)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
04 02 90	03 12 90	03 19 90	05 02 90	08 01 90
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05 01 90	04 09 90	04 17 90	05 31 90	09 01 90
05 15 90	04 24 90	05 01 90	06 14 90	09 01 90
06 01 90	05 10 90	05 17 90	07 01 90	10 01 90
06 15 90	05 24 90	06 01 90	07 15 90	10 01 90
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08 15 90	07 25 90	08 01 90	09 14 90	12 01 90
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02 01 91	01 10 91	01 17 91	03 03 91	06 01 91
02 15 91	01 25 91	02 01 91	03 17 91	06 01 91
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05 01 91	04 10 91	04 17 91	05 31 91	09 01 91
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12 02 91	11 07 91	11 14 91	01 01 92	04 01 92
12 16 91	11 21 91	12 02 91	01 15 92	04 01 92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

**EXECUTIVE ORDER NUMBER 129
AMENDING EXECUTIVE ORDER NUMBER 121
GOVERNOR'S MINORITY, FEMALE AND
DISABLED-OWNED BUSINESSES
CONSTRUCTION CONTRACTORS ADVISORY
COMMITTEE**

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 121 is amended, as follows:

Section 4. Membership. The membership of the Committee shall be comprised of at least the following 17 members to be appointed by, and serve at the pleasure of the Governor...

(D) The Secretary of the Department of Administration or his designee and the Secretary of the Department of Transportation or his designee will serve as ex-officio, non-voting members.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 14th day of December, 1990.

**EXECUTIVE ORDER NUMBER 130
SUPPLEMENTING EXECUTIVE ORDER
NUMBER 114**

Reference is made to Executive Order Number 114 dated May 8, 1990.

It has been determined from the continuing survey of the collection of revenues for the 1990-91 fiscal year made by the Office of State Budget and Management that unless economies are effected in State expenditures in addition to those heretofore effected, the State will incur a deficit in the administration of its General Fund budget.

THEREFORE, pursuant to authority granted to the Governor by Article III, Sec. 5(3) of the Constitution and to fulfill the duties required of the Governor thereunder:

1. It is found as a fact that based on General Fund revenue collections through December 31, 1990, and projections for the collection of these revenues through June 30, 1991, actual receipts of General Fund revenues for the 1990-91 fiscal year will not meet those anticipated and budgeted by the 1989 General Assembly.
2. From this fact it is determined and concluded that unless additional economies in State expenditures are made, the State's General Fund expenditures will exceed General Fund receipts for the biennium.
3. To insure that a deficit is not incurred in the administration of the General Fund budget for the 1989-90 biennium, the following additional economies in State expenditures are found to be necessary and are hereby **ORDERED**:

Section 1. Effective January 9, 1991, and until further notice, except those for which prior commitments have been made, vacant positions in those agencies of State Government funded by General Fund appropriations may not be filled, without prior written approval of the Office of State Budget and Management.

Section 2. This Order shall become effective at 10:00 a.m., January 9, 1991, and shall remain in effect until rescinded by further Executive Order.

Done at 10:00 a.m., in the Capital City of Raleigh, North Carolina, this 9th day of January, 1991.

[G.S. 120-30.911, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:MAP:JRN:lrj
DJ 166-012-3
90-3789

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

December 5, 1990

DeWitt F. McCarley, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to the three annexations [Ordinance Nos. 2221, 2222, and 2230 (1990)] and the designation of the annexations to Districts 1, 2, and 3 for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 9, 1990.

The Attorney General does not interpose any objection to the specified changes. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

U.S. Department of Justice
Civil Rights Division

JRD:MAP:TGL:mrj:rac
DJ 166-012-3
90-3761
90-3762

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

December 21, 1990

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the change in the method of election from at large to three single-member districts and two at-large positions elected by limited voting, and the districting plan for the Town of Williamston in Martin County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your partial responses to our September 18, 1990, request for additional information (copy enclosed) on October 22, and December 13 and 14, 1990.

This also refers to the Town of Williamston's submission under Section 5 of the January 22, 1990, annexation. We received your most recent submittals with respect to this matter on December 13 and 14, 1990.

The Attorney General does not interpose any objection to the submitted annexation. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

With respect to the change in method of election and districting plan, we understand that the town intends to adopt an alternative election method. In addition, a determination under Section 5 would be inappropriate at this time as the information provided in response to our September 18, 1990, request is incomplete and would not allow us to determine that the changes satisfy the Section 5 non-discrimination standards. The sixty-day review period under Section 5 will begin when we receive the town's submission of the new election plan (or when we receive the information specified in our September 18, 1990, letter). See 28 C.F.R. 51.9 and 51.37.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

TITLE 2 - DEPARTMENT OF
AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to repeal rule(s) cited as 2 NCAC 20B .0403.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 10:00 a.m. on March 12, 1991 at the Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P. O. Box 27647, Raleigh, NC 27611.

CHAPTER 20 - THE NORTH CAROLINA STATE
FAIR

SUBCHAPTER 20B - REGULATIONS OF THE
STATE FAIR

SECTION .0400 - OPERATION OF STATE FAIR
FACILITIES

.0403 CLASSIFICATION OF LESSEE

Statutory Authority G.S. 106-503.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend rule(s) cited as 2 NCAC 48A .1110; 48C .0001, .0002, .0004, .0005, .0006, .0018, .0023 and adopt 2 NCAC 48C .0028.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 10:00 a.m. on March 12, 1991 at the Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P. O. Box 27647, Raleigh, NC 27611.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .1100 - TOBACCO PLANT
CERTIFICATION

.1110 STANDARDS

(b) All certified tobacco plants offered for sale or imported under permit into North Carolina shall meet the following requirements:

(2) All plants shall be field inspected a ~~minimum~~ maximum of ~~three~~ five days prior to their being offered for sale in North Carolina.

Statutory Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

SUBCHAPTER 48C - SEEDS

.0001 SAMPLING: ANALYZING:
TESTING SEED AND TOLERANCES

The procedure for sampling seed by inspectors, the analyzing and testing of seed in the laboratory and tolerances permitted, shall be the same as approved by the Association of Official Seed Analysts; ~~of America as of June 1982~~; provided that the permitted tolerances shall not apply to ~~Johnson grass, crotalaria, balloon vine, jimsonweed, witchweed, or itchgrass~~ Balloonvine, Showy Crotalaria, Smooth Crotalaria, Itchgrass, Jimsonweed, Johnsongrass, Serrated Tussock or Witchweed when contained in any agricultural seed; and a maximum of five percentage points tolerance on germination will be applied on stated minimum germination standards.

Statutory Authority G.S. 106-277.9; 106-277.15.

.0002 NOXIOUS WEED SEED LIST

The following weed seeds are classified as prohibited noxious or restricted noxious:

(1) PROHIBITED:

- (e) (a) Balloon vine Balloonvine --Cardiospermum halicacabum L.;
- (e) (b) Crotalaria, Showy --Crotalaria spectabilis ; ~~and/or pallida Roth;~~
- (c) Crotalaria, Smooth--Crotalaria pallida Ait.;
- (f) (d) Itchgrass--Rottboellia exaltata; cochinchinensis (Lour.) W. Clayton;
- (d) (e) Jimsonweed--Datura stramonium L.;
- (b) (f) Johnson grass Johnsongrass --Sorghum halepense (L.) Pers.;
- (g) Serrated tussock Tussock, Serrated --Nassella trichotoma (Nees) Hack.;

PROPOSED RULES

- (e) (h) Witchweed--Striga asiatica (L.) Ktze.;
(2) RESTRICTED:

Limitations
Per 1 lb. of Seed

- (a) Nutsedge--Cyperus rotundus, 2 tubers or
and/or esculentus 27 seeds
(b) Blessed Thistle--Cnicus benedictus
4 seeds
(c) Cocklebur--Xanthium spp. 4 seeds
(d) Sandbur--Cenchrus spp. 4 seeds
(e) Sicklepod--Cassia obtusifolia
4 seeds
(f) Spurred Anoda--Anoda cristata
4 seeds
(g) Velvetleaf--Abutilon theophrasti
4 seeds
(h) Wild Onion and/or Wild Garlic--Allium
spp. Small grains or larger seeds 4 bulblets
Grasses and small seeded legumes 27 bulblets
(i) Morning-glory, wild, and giant
Morning-glory--
Ipomoea spp. 8 seeds
(j) Corncockle--Agrostemma githago
40 seeds
(k) Wild Radish--Raphanus raphanistrum
42 seeds
(l) Bermudagrass--Cynodon dactylon
27 seeds
(m) Canada thistle--Cirsium arvense
27 seeds
(n) Bindweed--Convolvulus spp.
27 seeds
(o) Cornflower--Centaurea cyanus
(known in North Carolina
as Ragged Robin) 27 seeds
(p) Texas panicum--Panicum texanum
27 seeds
(q) Bracted plantain--Plantago aristata
54 seeds
(r) Buckhorn plantain--Plantago
lanceolata 54 seeds
(s) Dock--Rumex crispus and/or
obtusifolia 54 seeds
(t) Dodder--Cuscuta spp. 54 seeds
(u) Giant foxtail--Setaria faberi 54 seeds
(v) Horsenettle--Solanum carolinense
54 seeds
(w) Quackgrass--Agropyron repens
54 seeds
(x) Wild mustard et al--Brassica spp.
54 seeds
(a) Anoda, Spurred--Anoda cristata
(L.) Schlecht. 4 seeds
(b) Bermudagrass--Cynodon dactylon
(L.) Pers. 27 seeds
(c) Bindweed, Field--Convolvulus

- arvensis L. 27 seeds
(d) Bindweed, Hedge--Calystegia
sepium (L.) R.Br. 27 seeds
(e) Cockle, Corn--Agrostemma
githago L. 10 seeds
(f) Cocklebur--Xanthium spp. 4 seeds
(g) Cornflower (Ragged Robin)--
Centaurea cyanus L. 27 seeds
(h) Dock, Broadleaf--Rumex
obtusifolius L. 54 seeds
(i) Dock, Curly--Rumex
crispus L. 54 seeds
(j) Dodder--Cuscuta spp. 54 seeds
(k) Foxtail, Giant--Setaria
faberi Herrm. 54 seeds
(l) Garlic, Wild--Allium spp.
Small grains or larger
seeds 4 bulblets
Grasses and small seeded
legumes 27 bulblets
(m) Horsenettle--Solanum
carolinense L. 54 seeds
(n) Morningglory--Ipomoea
spp. 8 seeds
(o) Mustard, Wild et al--
Brassica spp. 54 seeds
(p) Nutsedge, Purple--
Cyperus rotundus 2 tubers or
27 seeds
(q) Nutsedge, Yellow--Cyperus 2 tubers or
esculentus L. 27 seeds
(r) Onion, Wild--Allium spp.
Small grains or
larger seeds 4 bulblets
Grasses and small
seeded legumes 27 bulblets
(s) Panicum, Texas--Panicum
texanum Buckl. 27 seeds
(t) Plantain, Bracted--Plantago
aristata Michx. 54 seeds
(u) Plantain, Buckhorn--Plantago
lanceolata L. 54 seeds
(v) Quackgrass--Elytrigia repens
(L.) Nevski 54 seeds
(w) Radish, Wild--Raphanus
raphanistrum L. 12 seeds
(x) Sandbur--Cenchrus spp. 4 seeds
(v) Sicklepod--Cassia
obtusifolia L. 4 seeds
(z) Thistle, Blessed--Cnicus
benedictus L. 4 seeds
(aa) Thistle, Canada--Cirsium
arvense (L.) Scop. 27 seeds
(bb) Velvetleaf--Abutilon
theophrasti Medicus 4 seeds

Statutory Authority G.S. 106-277.9; 106-277.15.

.0004 PROHIBITIONS

The sale of any seed containing Johnson grass, Jimsonweed, Crotalaria, Witchweed, Balloon vine, Itchgrass, or Serrated tussock Balloonvine, Showy Crotalaria, Smooth Crotalaria, Itchgrass, Jimsonweed, Johnsongrass, Serrated Tussock, or Witchweed is prohibited.

Statutory Authority G.S. 106-277.15.

.0005 PROHIBITED SALES

The sale of any agricultural seed containing which contain any of the following weed seeds listed below in excess of the stated limitation per pound of crop seed is prohibited:

- (1) ~~over~~ two Purple Nutsedge and or Yellow Nutsedge tubers; per lb.;
- (2) ~~over~~ four Blessed Thistle, Spurred Anoda, Cocklebur, Sandbur, Sicklepod, Spurred Anoda, Blessed Thistle, Velvetleaf, Wild Radish or Wild Onion and or Wild Garlic (in small grains or larger seeds);
- (3) ~~over~~ eight Wild Morning glory and or Giant Morning glory (moonflower); Morning glory;
- (4) ~~over~~ 10 Corncockle; Corn Cockle;
- (5) ~~over~~ 12 Wild Radish;
- (6) ~~over~~ 27 Bermundagrass, Field Bindweed, Hedge Bindweed, Cornflower, Purple Nutsedge, Yellow Nutsedge seeds, Texas Panicum, Canada Thistle or Wild Onion and or Wild Garlic (in grasses and small seeded legumes); Bermuda grass, Canada thistle, Bindweed, Cornflower, Texas panicum or Nutsedge seeds;
- (7) ~~over~~ 54 Bracted Plantain, Buckhorn Plantain, Broadleaf Dock, Curly Dock, Dodder, Giant Foxtail, Horsenettle, Wild Mustard et al, Bracted Plantain, Buckhorn Plantain or Quackgrass, or Wild Mustard et al.

Statutory Authority G.S. 106-277.9; 106-277.15.

.0006 PROHIBITED SALES: EXCESS OF 144 NOXIOUS WEED SEEDS

The sale of any agricultural seed containing in excess of 144 noxious weed seeds per pound of crop seed, when occurring singly or in any combination, is prohibited.

Statutory Authority G.S. 106-277.15.

.0018 GERMINATION STANDARDS FOR VEGETABLE SEEDS

The following germination standards shall apply to vegetable seeds offered or exposed for sale for seeding purposes and shall be construed to include hard seed where applicable:

	Percent		Percent
Artichoke	60	Rhubarb	60
Asparagus	70 [‡]	Rutabaga	75
Beans, garden	70	Salsify	75
Beans, lima	70	Endive	70
Beets	65	Kale	75
Broccoli	75	Kohlrabi	75
Brussels sprouts	70	Leek	60
Corn Sweet	75	Lettuce	80
Cowpea	70	Muskmelon	75
Cress, garden	40	Mustard	75
Cress, water	35	Okra	50
Cucumber	80	Onion	70
Dandelion	45	Parsley	60
Egg Plant	60	Parsnip	60
Cabbage	75	Soybean	75
Carrot	55	Spinach (except	
Cauliflower	75	New Zealand)	60
Celery and celeriac	55	Spinach,	
Chicory	65	New Zealand	40
Citron	65	Squash	75
Collards	80	Swiss chard	65
Peas	80	Tomato	75
Pepper	55	Tomato, husk	50
Pumpkin	75	Turnip	80
Radish	75	Watermelon	70

[‡] Including hard seeds

	Percent
Artichoke	60
Asparagus	70
Bean, garden	70
Bean, lima	70
Beet	65
Broccoli	75
Brussels sprouts	70
Cabbage	75
Carrot	55
Cauliflower	75
Celeriac	55
Celery	55
Chard, Swiss	65
Chicory	65
Citron	65
Collards	80
Corn--sweet	75
Cowpea	70
Cress, garden	75
Cress, water	40
Cucumber	80
Dandelion	60
Eggplant	60
Endive	70
Kale	75
Kohlrabi	75
Leek	60
Lettuce	80

<u>Muskmelon</u>	<u>75</u>
<u>Mustard</u>	<u>75</u>
<u>Okra</u>	<u>50</u>
<u>Onion</u>	<u>70</u>
<u>Parsley</u>	<u>60</u>
<u>Parsnip</u>	<u>60</u>
<u>Pea</u>	<u>80</u>
<u>Pepper</u>	<u>55</u>
<u>Pumpkin</u>	<u>75</u>
<u>Radish</u>	<u>75</u>
<u>Rhubarb</u>	<u>60</u>
<u>Rutabaga</u>	<u>75</u>
<u>Salsify</u>	<u>75</u>
<u>Soybean</u>	<u>75</u>
<u>Spinach</u>	<u>60</u>
<u>Spinach, New Zealand</u>	<u>40</u>
<u>Squash</u>	<u>75</u>
<u>Tomato</u>	<u>75</u>
<u>Tomato, husk</u>	<u>50</u>
<u>Turnip</u>	<u>80</u>
<u>Watermelon</u>	<u>70</u>

Statutory Authority G.S. 106-277.15.

.0023 ANALYSIS FOR FARMERS OR SEEDMEN

(f) The fee for testing small grain seed for Loose Smut shall be fifteen dollars (\$15.00) per sample.

Statutory Authority G.S. 106-277.15.

.0028 MINIMUM HYBRID STANDARDS

For seed labeled as hybrid, the minimum hybridity for field corn, grain sorghum and tobacco shall be 95 percent. For other kinds of seed labeled as hybrid, the minimum hybridity shall be 75 percent.

Statutory Authority G.S. 106-277.15.

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the ECD, Credit Union Division intends to adopt rule(s) cited as 4 NCAC 6C .0408.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 10:00 a.m. on March 15, 1991 at the Dobbs Building, Room 4228, 430 North Salisbury Street, Raleigh, North Carolina 27603.

Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Stanley W. Brown, Jr., Credit Union Division, 430 North Salisbury Street, Raleigh, North Carolina 919-733-7501.

CHAPTER 6 - CREDIT UNION DIVISION

SUBCHAPTER 6C - CREDIT UNIONS

SECTION .0400 - LOANS

.0408 SALE OF LOANS

(a) A credit union may sell its loans provided the Board of Directors or designated Committee approves the sale and a written agreement and a schedule of loans covered by the agreement are retained in the credit union office.

(b) A credit union may not sell loans with recourse without the permission of the Administrator of Credit Unions.

(c) A credit union may agree to service any obligation it purchases or sells in whole or in part.

Statutory Authority G.S. 54-109.12; 54-109.21(9); 54-109.21(25); 54-109.22.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Facility Services intends to amend rule(s) cited as 10 NCAC 3J .2401.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 10:00 a.m. on March 6, 1991 at the Disability Determination Service, 321 Chapanoke Road, Raleigh, North Carolina.

Comment Procedures: Any interested person may present comments in writing at least three days prior to or at the hearing or make an oral presentation at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Jackie Sheppard, Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina, (919) 733-2342.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3J - THE OPERATION OF
LOCAL CONFINEMENT FACILITIES

SECTION .2400 - OPERATIONS MANUAL FOR
JAILS

.2401 REQUIREMENT FOR OPERATIONS
MANUAL

Within 12 months after the effective date of this Rule Effective January 1, 1992, the sheriff or the administrator of a regional jail shall develop written policies and procedures that describe how the jail will be operated.

Statutory Authority G.S. 153A-221.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Medical Care Commission (Division of Facility Services) intends to amend rule(s) cited as 10 NCAC 3T .0102, .0202 - .0203, .0501, .0601 - .0602, .0802 - .0803; and adopt rule(s) cited as 10 NCAC 3T .0603, .1101 - .1115, .1201 - .1211.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 9:30 a.m. on March 15, 1991 at the Division of Facility Services, Room 201, Council Building, 701 Barbour Drive, Raleigh, North Carolina 27603.

Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603 by March 15, 1991. Oral comments may be given at the hearing.

SUBCHAPTER 3T - HOSPICE LICENSING
RULES

SECTION .0100 - GENERAL INFORMATION

.0102 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Attending Physician" means the physician licensed to practice medicine in North Carolina who is identified by the patient at the time of hospice admission as having the most significant role in the determination and delivery of medical care for the patient.
- (2) "Care Plan" means the proposed method developed in writing by the interdisciplinary

care team through which the hospice seeks to provide services which meet the patient's and family's medical, psychosocial and spiritual needs.

- (3) "Clergy Member" means an individual who has received a degree from an accredited theological school and has fulfilled appropriate denominational seminary requirements; or an individual who, by ordination or authorization from the individual's denomination, has been approved to function in a pastoral capacity. The clergy member must have experience in pastoral duties and be capable of providing for hospice patients' spiritual needs.
- (4) "Coordinator of Volunteers" means an individual on the hospice staff who coordinates and supervises the activities of all volunteers.
- (5) "Department" means the Department of Human Resources.
- (6) "Dietary Counseling" means counseling given by a qualified dietitian, one who meets the qualifications established by the Committee on Professional Registration of the American Dietetic Association.
- (7) "Director" means the person having administrative responsibility for the operation of the hospice.
- (8) "Freestanding Hospice" means a facility providing inpatient hospice care, not a part of a facility offering other care or services.
- (9) "Governing Body" means ~~the person or~~ group of persons responsible for ~~the establishment of a hospice and for overseeing the operations of the hospice, specifically for the~~ development and monitoring of policies and procedures related to all aspects of the hospice program. The governing body ensures that all services provided are consistent with accepted standards of hospice practice.
- (10) "Home Health Aide" means an individual who ~~renders assistance to patients for personal care and any other duties specified in the care plan.~~ is a qualified nurse aide and who performs personal care and other duties to hospice patients in a private home.
- (11) "Hospice" means an organization offering a coordinated program of home care with provision for inpatient care for terminally ill patients and their families. Such care, available 24 hours a day, is provided by a medically directed interdisciplinary team of professionals and volunteers, directly or through an agreement, under the direction of an identifiable hospice administration. A hospice provides palliative and supportive medical and other services to meet the

- physical, psychological, social and spiritual needs of patients and their families which are experienced during the final stages of terminal illness, during dying and bereavement.
- (12) "Hospice Inpatient Unit" means a licensed facility providing inpatient hospice care.
- (13) ~~(12)~~ "Hospice Patient" means a patient whose medical prognosis of life expectancy is weeks or months, generally not to exceed six months, diagnosed as such by a physician.
- (14) ~~(13)~~ "Hospice Patient's Family" means the patient's immediate kin, including a spouse, brother, sister, child or parent. Other relatives and individuals with significant personal ties to the patient may be considered family members.
- (15) "Hospice Residence" is a home licensed to provide hospice care to no more than five hospice residents.
- (16) ~~(14)~~ "Hospice Staff" means personnel working under the jurisdiction of a hospice, either salaried employee or volunteer.
- (17) ~~(15)~~ "Identifiable Hospice Administration" means an administrative group, individual or legal entity that has an identifiable organizational structure, accountable to a governing body directly, or through a chief executive officer. This administration shall be responsible for the management of all aspects of the program.
- (18) ~~(16)~~ "Informed Consent" means the agreement to receive hospice care made by the patient and family which specifies in writing the type of care and services to be provided. The informed consent form is signed by the patient prior to service. If the patient's medical condition is such that a signature cannot be obtained, a signature is obtained from the individual having legal guardianship, applicable power of attorney, or the family member or individual assuming the responsibility of primary caregiver.
- (19) ~~(17)~~ "Inpatient Beds" means beds provided ~~by existing facilities for use by hospice patients, under written agreement, when they are required for medical management of symptoms or for respite care.~~
- (20) ~~(18)~~ "Interdisciplinary Care Team" means the following hospice personnel: physician, registered nurse, social worker, clergy member, the coordinator of volunteers, and appropriate volunteers. Other health care practitioners providing services such as physical therapy, occupational therapy, speech therapy, dietary counseling, home health aide services or other services may be included on the team when appropriate.
- (21) ~~(19)~~ "Licensed Practical Nurse" means a nurse duly licensed as such holding a valid current license as required by North Carolina Statute.
- (22) ~~(20)~~ "Medical Director" means a physician who directs the medical aspects of the hospice's patient care program.
- (23) "Nurse Aide" means an individual who is qualified to provide nursing care under the supervision of a licensed nurse and is registered as a nurse aide in a nurse aide registry approved by the Department.
- (24) ~~(21)~~ "Occupational Therapist" means an individual who is registered as such with the American Occupational Therapy Association.
- (25) ~~(22)~~ "Palliative Care" means treatment and comfort measures directed toward relief of symptoms, controlling pain and focusing on the special needs of the patient and family as they experience the stress of the dying process, rather than treatment aimed at intervention for the purpose of cure or prolongation of life.
- (26) ~~(23)~~ "Patient and Family Care Coordinator" means a registered nurse designated by the hospice to coordinate the provision of hospice services for each patient and family.
- (27) ~~(24)~~ "Pharmacist" means an individual duly licensed to practice pharmacy in North Carolina.
- (28) ~~(25)~~ "Physical Therapist" means an individual duly licensed as such, holding a valid current license as required by North Carolina Statute.
- (29) ~~(26)~~ "Physician" means an individual licensed to practice medicine in North Carolina.
- (30) ~~(27)~~ "Primary Caregiver" means the family member or other person who assumes the overall responsibility for the care of the patient in the home.
- (31) ~~(28)~~ "Registered Nurse" means a nurse duly licensed as such, holding a valid current license as required by North Carolina Statute.
- (32) ~~(29)~~ "Respite Care" means care provided to a patient in an inpatient setting for the purpose of temporary relief to family members or others caring for the patient at home.
- (33) ~~(30)~~ "Social Worker" means an individual holding a master's degree or a bachelor's degree in social work from a school accredited by the Council of Social Work Education with experience in a health related field and who is capable of providing for hospice patients' and families' psychosocial needs.

An individual holding a bachelor's or an advanced degree in psychology, counseling or psychiatric nursing may also function in this capacity if the same criteria are met.

- (34) ~~(34)~~ "Speech Therapist" means an individual duly licensed as such, holding a valid current license as required by North Carolina Statute.
- (35) ~~(32)~~ "Volunteer" means an individual, professional or nonprofessional, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice.

Statutory Authority G.S. 131E-202.

SECTION .0200 - LICENSE

.0202 APPLICATION FOR LICENSE

An application for a license to operate a hospice shall be submitted to the Department prior to a license being issued. Each application shall contain reasonable and necessary information which will include:

- (8) information related to the provision of inpatient and residential care, if applicable; and

Statutory Authority G.S. 131E-202.

.0203 ISSUANCE OF LICENSE

(c) If the facility provides inpatient or residential hospice care, the number of beds for each shall be reflected on the license.

Statutory Authority G.S. 131E-202.

SECTION .0500 - SCOPE OF SERVICES

.0501 SERVICE REQUIREMENTS

The governing body shall ensure through policies and implemented procedures that the following services encompassing the essential elements of hospice care be provided, either directly by hospice personnel, or by contractual arrangement:

- (6) Inpatient care services, for symptom management or respite care in a licensed hospital ~~skilled or nursing or intermediate care~~ facility. The hospice shall ensure that:
- (a) a written agreement, is signed by both providers, which assures that the inpatient facility will provide care and services to hospice patients when necessary;
- (b) the inpatient provider has policies consistent with the needs of hospice patients and their families and will, if necessary, modify policies such as visiting hour re-

strictions and routine tests, to meet those needs;

- (c) the hospice plan of care is furnished to the inpatient provider to ensure that the regimen established is followed as closely as feasible during the inpatient stay;
- (d) all inpatient treatment and services are documented in the inpatient medical record and a copy of the discharge summary retained as part of the hospice record; and
- (e) effective transition from one type care to another be maintained with continuity of care being the primary goal.

Statutory Authority G.S. 131E-202.

SECTION .0600 - PATIENT/FAMILY CARE

.0601 ACCEPTANCE OF PATIENTS

(c) Patients accepted shall be under the care of the attending a physician who has determined that hospice care is appropriate, ~~i.e., the illness is in the terminal stages with a life expectancy of weeks or months, generally not to exceed six months, and so indicates with a signed referral form. Medical care shall emphasize symptom control and pain management, and who agrees to serve as attending physician.~~

Statutory Authority G.S. 131E-202.

.0602 PROVISIONS OF CARE

~~(e) Care provided by home health aides shall be regularly supervised by appropriately licensed personnel.~~

Statutory Authority G.S. 131E-202.

.0603 HOME HEALTH AIDE SERVICES

(a) If the hospice provides or arranges for home health aide services, those services shall be provided in accordance with physician's orders and interdisciplinary team care plan.

(b) Home health aides shall only be assigned duties for which competence has been demonstrated and recorded in appropriate personnel records.

(c) Home health aide duties may include, but are not limited to:

- (1) providing or assisting with personal care, i.e. bathing, mouth care, hair and skin care;
- (2) checking vital signs and observing the patient's condition;
- (3) assisting with ambulation and exercises.
- (d) All home health aide services shall be performed in accordance with a written assignment prepared by and under the supervision of the

registered nurse. Supervision shall include a visit to the home by the nurse at least every two weeks, with or without the aide's presence, to assess the care and services provided. Documentation of supervisory visits shall be maintained in the medical record and include an assessment of the aide's performance in carrying out assigned duties and of the aide's relationship with the patient and family.

Statutory Authority G.S. 131E-202.

SECTION .0800 - DRUGS AND TREATMENT ORDERS AND ADMINISTRATION

.0802 ADMINISTRATION OF PHARMACEUTICALS

~~Medication shall be administered in the home by:~~

- ~~(1) a licensed registered nurse, licensed practical nurse, or physician;~~
- ~~(2) the patient, a family member or caregiver with approval of the attending physician or with orders of the attending physician, if applicable, and with supervision as needed.~~

(a) In a private home, the administration of prescribed medications is the primary responsibility of the patient, family member or caregiver. Where special skills or knowledge are required, medication shall be administered by a licensed registered nurse, licensed practical nurse with training specified by the North Carolina Board of Nursing, or physician.

(b) In a hospice residence, medications shall be administered under the supervision of a licensed nurse unless otherwise ordered by the physician.

(c) In a hospice inpatient unit, medications shall be administered by a licensed registered nurse, licensed practical nurse with training specified by the North Carolina Board of Nursing, or physician, unless otherwise ordered by the physician.

(d) The administration of all medications must be documented in the patient's record.

Statutory Authority G.S. 131E-202.

.0803 DRUG DISPOSITION

(a) The hospice shall not keep any legend drugs or pharmaceuticals on its licensed premises, unless it is a freestanding hospice, hospice residence, hospice inpatient unit, or a part of an inpatient facility licensed under G.S. 131E, Article 5 or 6.

Statutory Authority G.S. 131E-202.

SECTION .1100 - HOSPICE RESIDENTIAL CARE

.1101 ADMINISTRATION

(a) The hospice shall maintain administrative control of and responsibility for the provision of all services.

(b) The governing body shall have written policies and procedures governing the admission and delivery of all residential and inpatient hospice care services, including the management of medical and other emergencies.

(c) The hospice shall meet all state and local laws and regulations pertaining to health and safety, handicap access, and where applicable, zoning regulations.

Statutory Authority G.S. 131E-202.

.1102 HOSPICE RESIDENCE STAFFING

(a) There shall be a licensed nurse on duty in each residence 24 hours a day.

(b) There shall be at least two staff on duty at all times.

(c) All staff, including volunteers, counselors and clergy, shall complete training specific to dealing with the terminally ill and their families.

(d) Nurse aides employed to provide direct care shall be supervised by licensed nurses.

(e) Interdisciplinary team services shall be provided in accordance with the hospice plan of care.

Statutory Authority G.S. 131E-202.

.1103 PHARMACEUTICAL SERVICES

(a) Written policies and procedures shall be established and implemented to govern the procurement, storage, administration and disposal of all drugs and biologicals in accordance with federal and state laws.

(b) Pharmaceutical services shall be provided directly or through written agreement under the supervision of a licensed pharmacist and in accordance with Rule .0505 of this Subchapter. The pharmacist's duties shall include, but are not limited to the following:

- (1) advising the hospice and the hospice interdisciplinary team on all matters pertaining to the procurement, storage, administration, disposal and record-keeping of drugs and biologicals; interactions of drugs; and counseling staff on appropriate and new drugs;
- (2) inspecting all drug storage areas at least monthly;
- (3) conducting patients' drug regimen reviews frequently enough to monitor symptom control, no less often than monthly, with appropriate recommendations to the physician and hospice staff.

(c) Written policies and procedures shall be established and implemented for drug control and accountability. Records of receipt and disposition of all controlled drugs shall be maintained for accurate reconciliation.

(d) Medications shall be labeled as described in the Pharmacy Laws of North Carolina.

(e) Medications must be stored in locked areas, at proper temperature, and accessible only to authorized persons in accordance with federal and state laws. Separately locked compartments must be provided for storage of controlled substances listed in the North Carolina Controlled Substances Act and other drugs subject to abuse.

(f) Controlled substances no longer needed by the patient are disposed of in compliance with the North Carolina Controlled Substances Act.

(g) The hospice shall maintain an emergency drug kit appropriate to the needs of the facility, assembled in consultation with the pharmacist and readily available for use. The pharmacist shall check and restock the kit as necessary, at least monthly, or more often if needed.

Statutory Authority G.S. 131E-202.

.1104 DIETARY SERVICES

(a) The hospice shall develop and maintain written policies and procedures for dietary services.

(b) Dietary services shall be provided directly or may be provided through written agreement with a food service company. The written agreement, if applicable, shall meet the provisions of Rule .0505 of this Subchapter.

(c) The hospice shall assure that residents' favorite foods are included in their diets whenever possible.

(d) The food service shall be planned and staffed to serve three balanced meals at regular intervals or at a variety of times depending upon the needs of the residents. No more than 14 hours shall elapse between a substantial evening meal and breakfast.

(e) The hospice shall appoint a staff member trained or experienced in food management to:

(1) plan menus to meet the nutritional needs of the residents.

(2) supervise meal preparation and service.

(f) Therapeutic diets shall be prescribed by the physician and planned by a registered dietitian.

(g) Between-meal snacks of nourishing quality shall be offered and be available on a 24 hour basis.

(h) The procurement, storage and refrigeration of food, refuse handling and pest control shall comply with the most current sanitation rules promulgated by the Division of Health Services.

Statutory Authority G.S. 131E-202.

.1105 HOSPICE VISITATION

(a) The hospice shall:

(1) provide areas that ensure privacy for visitation and at the time of death;

(2) arrange for family members to remain with the patient overnight.

(b) Family and friends may visit at any hour. Children and pets shall not be excluded.

Statutory Authority G.S. 131E-202.

.1106 INFECTION CONTROL

(a) The hospice shall develop and implement an infection control program which shall aim to protect the residents, family and personnel from hospice or community associated infections.

(b) There shall be written policies and procedures governing the infection control program, developed by the hospice administrator and medical director and approved by the governing body.

(c) Universal precautions, as specified by the Centers for Disease Control (CDC), shall be defined in writing and strictly followed.

(d) All employees shall wear clean garments or protective clothing at all times and shall practice good personal hygiene and cleanliness.

(e) A procedure shall be developed whereby the implementation of the infection control program is monitored on a monthly basis.

Statutory Authority G.S. 131E-202.

.1107 HOUSEKEEPING AND LINENS

(a) Linen requirements shall include:

(1) The use of common towels, washcloths, cups or any other personal care articles is prohibited.

(2) Each resident shall have a supply of towels, washcloths and soap.

(3) There shall be a supply of clean bed linens, towels, and washcloths.

(4) There shall be a separate closed area for storage of clean linen.

(5) Clean bed linens shall be changed as often as necessary, but no less than twice each week.

(6) Mattress pads and pillows shall be of washable material.

(7) There shall be separate storage for soiled linen and clothing. Such storage may consist of individual plastic bags or covered hampers or a soiled linen room. All personnel shall wash their hands thoroughly after handling soiled linen.

- (8) Laundry equipment shall be maintained in the facility or arrangements made with a commercial laundry to handle soiled linen.
- (b) Housekeeping requirements are as follows:
 - (1) Housekeeping practices and procedures shall be employed to keep the home free from offensive odors, accumulations of dirt, rubbish and dust.
 - (2) Cleaning shall be performed in a manner to minimize the spread of pathogenic organisms. Floors shall be cleaned regularly. Polishes on floors shall provide a non-skid finish; throw or scatter rugs shall not be used except for non-skid entrance mats.

Statutory Authority G.S. 131E-202.

.1108 REPORT OF DEATH

The hospice shall have a written plan to be followed in case of patient death. The plan must provide for:

- (1) collection of data needed for the death certificate, as required by G.S. 130A-117;
- (2) recording time of death;
- (3) pronouncement of death;
- (4) notification of attending physician responsible for signing death certificate;
- (5) notification of next of kin or legal guardian;
- (6) authorization and release of body to funeral home; and
- (7) notification to the Department of any death resulting from an injury, accident, or other possible unnatural causes.

Statutory Authority G.S. 131E-202.

.1109 RESIDENT CARE AREAS

(a) Resident rooms shall meet the following requirements:

- (1) There shall be private or semiprivate rooms.
- (2) Infants and small children shall not be assigned to a room with an adult resident unless requested by residents and families.
- (3) Each resident room shall contain at least a bed, a mattress protected by waterproof material, mattress pad and pillow, and a chair.
- (4) Each resident room shall have a minimum of 48 cubic feet of closet space or wardrobe for clothing and personal belongings that provides security and privacy for each resident. Each resident room shall be equipped with a towel rack for each individual.
- (5) Each resident bedroom shall:

- (A) be located at or above grade level.
 - (B) have provisions to ensure visual privacy for treatment or visiting.
 - (C) have a direct entry from the corridor.
- (6) Artificial lighting shall be provided sufficient for treatment and non-treatment needs, 50 foot candles for treatment, 35 foot candles for non-treatment areas.
- (b) Bathrooms shall meet the following requirements:
 - (1) Bathroom facilities shall be conveniently accessible to resident rooms and shall include a tub, lavatory and water closet. One bathroom may serve up to four residents and staff. Minimum size of any bathroom shall be 18 square feet. The door shall be at least 32 inches wide.
 - (2) The bathroom shall be furnished with the following:
 - (A) toilet with grab bars;
 - (B) lavatory with four inch wrist blade controls;
 - (C) mirror; and
 - (D) soap, paper towel dispensers, and waste paper receptacle with a removable impervious liner.
 - (c) Space shall be provided for:
 - (1) charting, storage of supplies and personal effects of staff.
 - (2) the storage of resident care equipment.
 - (3) housekeeping equipment and cleaning supplies.
 - (4) storage of test reagents and disinfectants distinct from medication.
 - (5) locked medication storage and preparation.
 - (6) drugs requiring refrigeration. They may be stored in a separate locked box in the refrigerator or in a lockable drug-only refrigerator, capable of maintaining a temperature range of 36 degrees F (2 degrees C) to 46 degrees F (8 degrees C). The storage and accountability of controlled substances shall be in accordance with the North Carolina Controlled Substances Act, G.S. 90-86 et. seq.
 - (d) Kitchen and dining areas shall have:
 - (1) a refrigerator,
 - (2) a cooking unit ventilated in an acceptable manner,
 - (3) a 42" minimum double-compartment sink and domestic dishwashing machine capable of sanitizing dishes with 160 degrees F. water,
 - (4) dining space of 20 square feet per resident, and
 - (5) adequate storage space for non-perishables.

- (e) Other areas shall include:
 - (1) A minimum of 150 square feet exclusive of corridor traffic for recreational and social activities.
 - (2) There shall be an audible and accessible call system furnished in each resident's room and bathroom.
 - (3) Each facility shall provide heating and air cooling equipment to maintain a comfort range between 68 degrees and 80 degrees Fahrenheit.

Statutory Authority G.S. 131E-202.

.1110 FURNISHINGS

Furnishings of the residence shall be home-like and non-institutional and include lounge furniture in addition to furnishings in resident rooms. Accessories such as wallpaper, bedspreads, carpets and lamps shall be selected to create such an atmosphere. Provision shall be made for each resident to bring items from home to place about the room to the extent available space allows.

Statutory Authority G.S. 131E-202.

.1111 HOSPICE RESIDENCE ZONING AND FIRE SAFETY REQUIREMENTS

Hospices maintained as residential facilities shall provide documentation of approval from local zoning commissions, fire departments and building departments.

Statutory Authority G.S. 131E-202.

.1112 DESIGN AND CONSTRUCTION

(a) Hospice residences and inpatient units must meet the requirements of the North Carolina State Building Code in effect at the time of construction, additions, alterations or repairs. The Building Code is hereby adopted by reference pursuant to G.S. 150B-14(c).

(b) Each facility shall be planned, constructed, and equipped to support the services to be offered in the facility.

(c) Any existing building converted to a hospice facility shall meet all requirements of a new facility.

(d) The sanitation, water supply, sewage disposal, and dietary facilities must comply with the rules of the Commission for Health Services which are hereby adopted by reference pursuant to G.S. 150B-14(c).

Statutory Authority G.S. 131E-202.

.1113 PLANS AND SPECIFICATIONS

(a) When construction or remodeling is planned, final working drawings and specifications must be submitted by the owner or their appointed representative to the Department of Human Resources, Division of Facility Services for review and approval. Schematic drawings and preliminary working drawings should be submitted by the owner prior to the required submission of final working drawings. The Department will forward copies of each submittal to the Department of Insurance and Division of Health Services for review and approval. Three copies of the plans shall be provided at each submittal.

(b) Construction work should not be commenced until written approval has been given by the Department. Approval of final plans and specifications shall expire one year from the date granted unless a contract for the construction has been signed prior to the expiration date.

(c) If an approval expires, a renewed approval shall be issued provided revised plans meeting all current regulations, codes, and standards are submitted.

(d) Completed construction must conform to the minimum standards established in these Rules.

(e) The owner or designated agent shall notify the Department when actual construction starts and at points when construction is 75 percent and 90 percent complete and upon final completion, so that periodic and final inspections can be performed.

(f) The owner or designated agent shall submit for approval by the Department all alterations or remodeling changes which affect the structural integrity of the building, functional operation, fire safety or which add beds or facilities over those for which the facility is licensed.

Statutory Authority G.S. 131E-202.

.1114 PLUMBING

(a) The water supply shall be designed, constructed and protected so as to assure that a safe, potable and adequate water supply is available for domestic purposes in compliance with the North Carolina State Building Code.

(b) All plumbing in the residence or unit shall be installed and maintained in accordance with the North Carolina State Plumbing Code, which is hereby adopted by reference pursuant to G.S. 150B-14(c). All plumbing shall be maintained in good repair and free of the possibility of backflow and backsiphonage, through the use of vacuum breakers and fixed air gaps, in accordance with state and local codes.

(c) For homes with five or more residents, a 50-gallon quick recovery water heater is required. For homes with fewer than five residents, a 40-gallon quick recovery water heater is required.

Statutory Authority G.S. 131E-202.

.1115 WASTE DISPOSAL

(a) Sewage shall be discharged into a public sewer system, or if such is not available, it shall be disposed of in a manner approved by the North Carolina Division of Environmental Health.

(b) Garbage and rubbish shall be stored in impervious containers in such a manner as not to become a nuisance or a health hazard. A sufficient number of impervious containers with tight-fitting lids shall be provided and kept clean and in good repair. Refuse shall be removed from the outside storage at least once a week to a disposal site approved by the local health department.

(c) The home or unit shall be maintained free of infestations of insects and rodents, and all openings to the outside shall be screened.

Statutory Authority G.S. 131E-202.

SECTION .1200 - HOSPICE INPATIENT CARE

.1201 REQUIREMENTS FOR HOSPICE INPATIENT UNITS

Hospice inpatient units must conform to the rules outlined in 10 NCAC 3T .0100 through .1115 and those in this Section.

Statutory Authority G.S. 131E-202.

.1202 ADDITIONAL STAFFING REQUIREMENTS FOR HOSPICE INPATIENT UNITS

(a) All nursing services shall be provided under the supervision of a registered nurse.

(b) There shall be sufficient nursing personnel on duty to meet patients' total nursing needs. At a minimum, one registered nurse and one hospice staff person shall be on duty at all times.

(c) Considerations for determining sufficiency of nursing personnel include, but are not limited to:

- (1) number of patients;
- (2) specific patient care requirements;
- (3) family care needs; and
- (4) availability of support from other interdisciplinary team members.

Statutory Authority G.S. 131E-202.

.1203 ADDITIONAL SERVICES REQUIRED

FOR HOSPICE INPATIENT CARE

(a) The hospice shall assure, directly or through written agreement, the provision of duly licensed radiology, laboratory, pathology and other medically related services in accordance with physicians' orders. Written agreement shall be in keeping with Rule .0505 of this Subchapter. If those services are provided directly, written policies and procedures shall govern their implementation.

(b) Radiology, laboratory and pathology services shall be under the direction of a physician qualified by education, training and experience to assume that function.

Statutory Authority G.S. 131E-202.

.1204 ADDITIONAL PATIENT CARE AREA REQTS FOR HOSPICE INPATIENT UNITS

(a) The floor area of a single bedroom shall not be less than 100 square feet and the floor area of a room for more than one bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules or wardrobes.

(b) The total space set aside for dining, recreation and other common uses shall not be less than 30 square feet per bed. Physical therapy and occupational therapy space shall not be included in this total.

(c) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One toilet room may serve two patient rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided for each 15 beds not individually served. There shall be at least one bathtub accessible on three sides and one shower provided for each 60 beds or fraction thereof.

(d) For each nursing unit or fraction thereof on each floor, the following shall be provided:

- (1) an adequate medication preparation area with counter, sink with four-inch handles, medication refrigerator, eye-level medication storage, cabinet storage, and double-locked narcotic storage room, located adjacent to the nursing station or under visual control of the nursing station;
- (2) a clean utility room with counter, sink with four-inch handles, wall and under counter storage;
- (3) a soiled utility room with counter, sink with four-inch handles, wall and under counter storage, a flush-rim clinical sink or water closet with a suitable device for

cleaning bedpans and a suitable means for washing and sanitizing bedpans and other utensils;

- (4) a nurses' toilet and locker space for personal belongings;
 - (5) an audiovisual nurse-patient call system arranged to ensure that a patient's call in the facility is noted at a staffed station;
 - (6) a soiled linen storage area;
 - (7) a clean linen storage room area; and
 - (8) at least one janitor's closet.
- (e) Dietary and laundry each must have a janitor's closet.
- (f) Stretcher and wheelchair storage shall be provided.
- (g) Bulk storage shall be provided at the rate of five square feet of floor area per bed.
- (h) Office space shall be provided for persons with administrative responsibilities for the unit.

Statutory Authority G.S. 131E-202.

.1205 FURNISHINGS FOR HOSPICE INPATIENT CARE

- (a) Handgrips shall be provided for all toilet and bath facilities used by patients. Handrails shall be provided on both sides of all corridors used by patients.
- (b) For each nursing unit or fraction thereof on each floor, the following shall be provided:
- (1) a nourishment station with work space, cabinet, and refrigerated storage, a small stove or hotplate in an area physically separated from the nurses' station; and
 - (2) one nurses' station consisting of adequate desk space for writing, storage space for office supplies and storage space for patients' records.
- (c) Flameproof privacy screens or curtains shall be provided in multi-bedded rooms.

Statutory Authority G.S. 131E-202.

.1206 HOSPICE INPATIENT FIRE AND SAFETY REQUIREMENTS

- (a) A new facility shall meet the requirements of the current North Carolina State Building Code which is hereby adopted by reference pursuant to G.S. 150B-14(c) and the following additional requirements:
- (1) Where nursing units are located on the same floor with other departments or services, the facility shall be designed to provide separation from the other departments or services with a smoke barrier.
 - (2) Horizontal exits are not permitted in any new facility.

- (3) An addition to an existing facility shall meet the same requirements as a new facility except that in no case shall more than one horizontal exit be used to replace a required exit to the outside. For all construction, an emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system.

(b) The hospice shall establish written policies and procedures governing disaster preparedness and fire protection.

(c) The hospice has an acceptable written plan periodically rehearsed with staff with procedures to be followed in the event of an internal or external disaster, and for the care of casualties of patients and personnel arising from such disasters.

(d) The fire protection plan shall include:

- (1) instruction for all personnel in use of alarms, fire fighting equipment, methods of fire containment, evacuation routes and procedures for calling the fire department and the assignment of specific tasks to all personnel in response to an alarm; and
- (2) fire drills for each shift of personnel at least quarterly.

Statutory Authority G.S. 131E-202.

.1207 HOSPICE INPATIENT REQUIREMENTS FOR HEATING AND AIR CONDITIONING

Heating and cooling systems shall meet the current American Society of Heating, Refrigeration, and Air Conditioning Engineers Guide and National Fire Protection Association Code 90A, which is hereby adopted by reference pursuant to G.S. 150B-14(c), with the following modification:

- (1) Soiled linen, bathrooms, janitor closets and soiled utility rooms must have negative pressure with relationship to adjacent areas.
- (2) Clean linen, clean utility and drug rooms must have positive pressure with relationship to adjacent areas.
- (3) All areas not covered in Paragraphs (1) and (2) of this Rule must have neutral pressure.

Statutory Authority G.S. 131E-202.

.1208 HOSPICE INPATIENT REQUIREMENTS FOR EMERGENCY ELECTRICAL SERVICE

Emergency electrical service shall be provided for use in the event of failure of the normal electrical service. This emergency service shall be made up as follows:

- (1) In any existing facility, the following must be provided:
 - (a) type 1 or 2 emergency lights as required by the North Carolina State Building Code;
 - (b) additional emergency lights for all nursing stations, drug preparation and storage areas, and for the telephone switchboard, if applicable;
 - (c) one or more portable battery-powered lamps at each nursing station; and
 - (d) a suitable source of emergency power for life-sustaining equipment to ensure continuous operation for a minimum of 72 hours.
- (2) Any addition to an existing facility shall meet the same requirements as new construction.
- (3) Any conversion of an existing building such as a hotel, motel, abandoned hospital or abandoned school, shall meet the same requirements for emergency electrical services as required for new construction.
- (4) Battery-powered corridor lights shall not replace the requirements for the emergency circuit nor be construed to substitute for the generator set. Sufficient fuel shall be stored for the operation of the emergency generator for a period not less than 72 hours, on a 24-hour per day operational basis. The system shall be test run for a period of not less than 15 minutes on a weekly schedule. Records of running time shall be maintained and kept available for reference.
- (5) To ensure proper evaluation of design of emergency power systems, the owner or operator shall submit with final working drawings and specifications a letter describing the policy for admissions and discharges to be used when the facility begins operations. If subsequent inspections for licensure indicate the admission policies have been changed, the facility will be required to take immediate steps to meet appropriate code requirements for continued licensure.
- (6) Lighting for emergency electrical services shall be provided in the following places:
 - (a) exit ways and all necessary ways of approach exits, including exit signs and exit direction signs, exterior of exits exit doorways, stairways, and corridors;
 - (b) dining and recreation rooms;
 - (c) nursing station and medication preparation area;
 - (d) generator set location, switch-gear location, and boiler room, if applicable; and
 - (e) elevator, if required for emergency.
- (7) Emergency equipment which is essential to life, safety, and the protection of important equipment or vital materials shall be provided:
 - (a) nurses' calling system;
 - (b) alarm system including fire alarm actuated at manual stations, water flow alarm devices of sprinkler systems if electrically operated, fire detecting and smoke detecting systems, paging or speaker systems if intended for issuing instructions during emergency conditions, and alarms required for nonflammable medical gas systems, if installed;
 - (c) fire pump, if installed;
 - (d) sewerage or sump lift pump, if installed;
 - (e) one elevator, where elevators are used for vertical transportation of patients;
 - (f) equipment such as burners and pumps necessary for auxiliaries and controls, required for heating and sterilization, if installed; and
 - (g) equipment necessary for maintaining telephone service.
- (8) Where electricity is the only source of power normally used for space heating, the emergency service shall be provided for heating of patient rooms. Emergency heating of patient rooms will not be required in areas where the facility is supplied by at least two separate generating sources, or a network distribution system with the feeders so routed, connected, and protected that a fault any place between the generators and the facility will not likely cause an interruption.
- (9) The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within ten seconds through one or more primary automatic transfer switches to all emergency lighting, alarms, nurses' call, equipment necessary for maintaining telephone service, and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the ten second primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification.

Statutory Authority G.S. 131E-202.

**.1209 HOSPICE INPATIENT REQUIREMENTS
FOR GENERAL ELECTRICAL**

(a) All main water supply shut off valves in the sprinkler system must be electronically supervised so that if any valve is closed an alarm will sound at a continuously manned central station.

(b) No two adjacent emergency lighting fixtures shall be on the same circuit.

(c) Receptacles in bathrooms must have ground fault protection.

(d) Each patient bed location must be provided with a minimum of four single or two duplex receptacles.

(e) Each patient bed location must be supplied by at least two branch circuits.

(f) The fire alarm system must be installed to transmit an alarm automatically to the fire department that is, legally committed to serve the area in which the facility is located, by the direct and reliable method approved by local ordinances.

(g) In patient areas, fire alarms shall be gongs or chimes rather than horns or bells.

Statutory Authority G.S. 131E-202.

.1210 OTHER HOSPICE INPATIENT REQUIREMENTS

(a) In general patient areas, each room shall be served by at least one calling station and each bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall register with the floor staff and shall activate a visible signal in the corridor at the patient's or resident's door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems which provide two-way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating. A nurses' call emergency button shall be provided for patients' use at each patient toilet, bath, and shower room.

(b) At least one telephone shall be available in each area to which patients are admitted and additional telephones or extensions as are necessary to ensure availability in case of need.

(c) General outdoor lighting shall be provided adequate to illuminate walkways and drive.

Statutory Authority G.S. 131E-202.

.1211 ADDITIONAL PLUMBING REQUIREMENTS FOR HOSPICE INPATIENT UNITS

For inpatient units, the hot water system shall be adequate to provide:

	<u>Patient Areas</u>
Gallons per hour per bed	6½
Temperature degrees F.	110-116

<u>Dietary</u>	<u>Laundry</u>
4	4½
140 (min)	140 (min)

Statutory Authority G.S. 131E-202.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Social Services intends to amend rule(s) cited as 10 NCAC 24A .0303; 35E .0103 - .0104; 35F .0002; 39D .0101, .0202, .0404, .0408 - .0409; 41H .0405, .0407 - .0408, .0501 - .0502; 44B .0402, .0502, .0507 - .0508, .0510, .0519; and adopt rule(s) cited as 10 NCAC 39D .0210, .0411 - .0413; 41H .0601 - .0604.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 10:00 a.m. on March 6, 1991 at the Disability Determination Bldg., 321 Chapanoke Rd., Raleigh, N.C.

Comment Procedures: Interested persons may present their views and comments in writing before or at the hearing, or orally at the hearing. Time limits may be imposed as deemed necessary by the Commission Chairman. A fiscal note has been prepared. Any person may request information or copies of the proposed regulations by writing or calling Donna A. Creech, Special Assistant, Social Services, 325 N. Salisbury St., Raleigh, NC 27603 (919) 733-3055.

CHAPTER 24 - SOCIAL SERVICES: GENERAL

SUBCHAPTER 24A - GENERAL

SECTION .0300 - COMMISSION

.0303 SELECTION OF COUNTY BOARD MEMBERS BY SOCIAL SERVICES COMMISSION

(a) ~~Field representatives in the division regional offices~~ Division Regional Directors are required to name for consideration for county board membership at least ~~three persons~~ one person whose ~~names are~~ name is secured from organizations, interested groups, or individuals within the county. The Commission may, however,

appoint persons who are recommended through other sources.

(b) When a county board member is eligible for reappointment, the regional director of that county shall advise the Commission if that person has attended county board meetings regularly. ~~and has participated actively on the board.~~

Statutory Authority G.S. 108A-1; 108A-3; 108A-6; 143B-153.

CHAPTER 35 - FAMILY SERVICES

SUBCHAPTER 35E - SOCIAL SERVICES BLOCK GRANT (TITLE XX)

SECTION .0100 - CONDITIONS OF ELIGIBILITY

.0103 INCOME ELIGIBLE STATUS

(a) Individuals other than those eligible on the basis of income maintenance status may be determined eligible on the basis of the family's monthly gross income.

~~(b) In order to be eligible on the basis of income eligible status, an individual's family monthly gross income may not exceed the state's established income for that size family and the maximum income level for the services requested.~~

~~(b) (c) For purposes of determining To determine income eligibility, an individual's family size and income must be determined. it is necessary to determine: the number of individuals who reside in the same household; who are financially obligated to one another (the income unit); and the amount of the gross monthly income available to them.~~

~~(1) For purposes of determining family size, family means the basic family unit consisting of one or more adults and children, if any, related by blood, marriage, or adoption and residing in the same household. Where related adults, other than spouses, or unrelated adults reside together, each is considered a separate family. Children living with non-legally responsible relatives, emancipated minors, and children living under the care of unrelated persons are also considered to be one person families.~~

~~(c) The following are defined as separate income units for purposes of determining eligibility and fees.~~

- ~~(1) Biological or adoptive parents and their minor children;~~
- ~~(2) A minor parent and his or her children;~~
- ~~(3) Each adult, whether related or unrelated, other than spouses;~~

~~(4) Children living with adults other than their biological or adoptive parents;~~

~~(5) Minors who are emancipated through a court proceeding, marriage or participation in the armed services.~~

~~(d) (2) Components of income Income that are is considered in computing family monthly gross income are set forth is listed in the Family Services Manual, as described in 10 NCAC 35A .0003.~~

Statutory Authority G.S. 50-13.4; 110-129(2); 143B-153.

.0104 DEFINITION OF ESTABLISHED INCOME

~~The established income shall be the amount determined by the Social Services Commission for a family of four and adjusted accordingly for different size families. The established income is the median income set by the federal government and printed in the Federal Register of 1979, approved by the Social Services Commission as the standard for use in determination of eligibility and fees.~~

Statutory Authority G.S. 143B-153.

SUBCHAPTER 35F - FEES FOR SERVICES

.0002 SERVICES FOR WHICH FEES ARE CHARGED

Fees must be charged for the following services or resource items when these services are provided to individuals whose family gross monthly income is at or above 100 percent of the state's established income (median income designated in the Federal Register of 1979) ~~for their family size; adjusted according to the number of persons contained in the income unit:~~

- (1) chore services;
- (2) day care services for adults;
- (3) homemaker services;
- (4) preparation and delivery of meals;
- (5) housing and home improvement resource items only; and
- (6) personal and family counseling services.

Statutory Authority G.S. 143B-153.

CHAPTER 39 - EMPLOYMENT PROGRAMS

SUBCHAPTER 39D - JOB OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS) PROGRAM

SECTION .0100 - ADMINISTRATION

.0101 IMPLEMENTATION SCHEDULE

(a) All counties operating a Community Work Experience Program on January 1, 1990 shall begin operation of the Job Opportunities and Basic Skills Training (JOBS) Program on October 1, 1990.

(b) Effective April 1, 1991:

- (1) Any county within a single county Metropolitan Statistical Area shall begin operation of the JOBS program.
- (2) Any county which has not begun the JOBS program and in which 1.500 percent or higher of the state's adult AFDC recipient population resided in September 1989 shall begin operation of the JOBS program.
- (3) Based on fund availability any remaining county which has not implemented JOBS may voluntarily begin operation of the JOBS program.

(c) Effective July 1, 1991:

- (1) Any county which has not begun the JOBS program and in which .855 percent or higher of the state's adult AFDC recipient population resided in September 1989 shall begin operation of the JOBS program.
- (2) Based on fund availability, any remaining county which has not begun the JOBS program may voluntarily begin operation of the JOBS program.

(d) Effective January 1, 1992:

- (1) Any county which has not begun the JOBS program and in which .346 percent or higher of the state's adult AFDC recipient population resided in September 1989 shall begin operation of the JOBS program.
- (2) Based on fund availability, any remaining county which has not begun the JOBS program may voluntarily begin operation of the JOBS program.

(e) Any remaining county which has not implemented the JOBS program shall begin operation of the JOBS program effective July 1, 1992, when Federal JOBS funds are available. In the event that available Federal JOBS funds cannot support all remaining counties which have not begun the JOBS program, each remaining county will begin the JOBS program in the following manner:

- (1) The county in which the highest number of the state's adult AFDC recipient population resided, based on the most currently available data, shall begin the JOBS program ahead of the remaining counties; and
- (2) Each remaining county will begin the JOBS program in descending order based

on the number of the state's adult AFDC recipient population residing in the county, based on the most currently available data, and the availability of Federal JOBS funds to support the JOBS program in the county.

(f) The Division of Social Services shall establish criteria for granting individual waivers to the implementation schedule described in this Rule in situations where a county department of social services is unable to implement the JOBS Program due to circumstances beyond the county's control. The director of the county department of social services must submit a written request for the waiver which describes the reasons for the waiver and proposes a time frame for implementing the JOBS Program. The request must be signed by the chairman of county's Social Services Board and the chairman of the county commissioners.

Authority G.S. 108A-29; 143B-153; 42 U.S.C. 682(a)(2); 45 C.F.R. 250.11.

SECTION .0200 - JOBS PARTICIPATION

.0202 CONCILIATION PROCEDURE

(a) ~~Each county department of social services~~ The Division of Social Services shall establish a written conciliation procedure allowing participants and staff responsible for JOBS case management to appeal and resolve disputes affecting program participation, including but not limited to provision of supportive services and work experience placement conditions. The procedure shall include an opportunity for a meeting between the participant and JOBS staff for the purpose of resolving the dispute. If the dispute is not resolved, the procedure shall include an opportunity for an informal hearing conducted by the county director or his designee.

(b) The county department of social services shall begin the conciliation process within seven calendar days after a participant or staff responsible for JOBS case management asks for conciliation. The conciliation process shall not extend beyond 30 calendar days after the date of the initial request for conciliation.

Authority G.S. 108A-29; 143B-153; 42 U.S.C. 682(a)(2); 45 C.F.R. 250.36.

.0210 SERVICES DURING GAPS IN PARTICIPATION

The following supportive services can be provided up to the maximum time specified in 45 CFR 255.2(d):

- (1) Child care services for an individual who is waiting to enter an approved education, training, or JOBS component or employment; and
- (2) Other supportive services as defined in the State's Supportive Services Plan as required by 45 CFR 255.1.

Authority G.S. 108A-29; 45 C.F.R. 255.2(d).

SECTION .0400 - SUPPORTIVE SERVICES

.0404 TRANSPORTATION SERVICES

Transportation services mean arranging for, providing or purchasing transportation as part of an employability plan to enable JOBS participants and family members for whom transportation is not otherwise available to have access to medical and health resources, education, employment and training opportunities, and other community facilities and resources to support the delivery of social services necessary and proper to carry out the individual's employability plan as defined in 45 CFR 250.41.

Authority G.S. 108A-29; 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0408 PARTICIPATION EXPENSES

Payment of expenses for JOBS participants and family members are allowable when needed to facilitate participation in approved education or training activities or both. ~~not to exceed five hundred dollars (\$500.00) per 12 month period unless approval to exceed that amount is granted by the director of the county department of social services.~~ Expenses may include, but are not limited to, car repairs, licensing fees, medical and dental services, when otherwise not available.

Authority G.S. 108A-29; 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2); 45 C.F.R. 255.2(c)(1).

.0409 ONE-TIME WORK RELATED EXPENSES

Payment of expenses are allowable when needed, as determined by an individual assessment, to allow AFDC applicants and recipients in JOBS counties to accept or maintain employment. ~~not to exceed five hundred dollars (\$500.00) per 12 month period unless approval to exceed that amount is granted by the director of the county department of social services.~~ Expenses may include but are not limited to tools, uniforms, car repairs and insurance, licensing fees, medical and dental services not otherwise available, and relocation costs.

Authority G.S. 108A-29; 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2); 45 C.F.R. 255.2(c)(3).

.0411 SUPPORTIVE SERVICES TO BE AVAILABLE IN NON-JOBS COUNTIES

Child care and child care transportation shall be made available to an AFDC parent in a non-JOBS county who meets the following criteria:

- (1) Receives AFDC either as an adult or child recipient; and
- (2) Is age 13 through 19; and
- (3) Is enrolled either as a full-time or part-time student in an elementary or secondary school or high school equivalency program; and
- (4) Is living with the child; and
- (5) Has a child care cost for the child so that the parent can attend school.

Authority G.S. 108A-29; 45 C.F.R. 255.2(c)(2).

.0412 SUPPORTIVE SERVICES LIMITS

The monetary limits to be placed on JOBS supportive services shall be established by the Division of Social Services and included in the State Supportive Services Plan as required by 45 CFR 255.1(c).

Authority G.S. 108A-29; 45 C.F.R. 255.1(c).

.0413 DEFINITION OF FAMILY MEMBER

For purposes of receiving JOBS funded supportive services, a family member of a JOBS participant means one of the following:

- (1) A spouse who lives in the same house; or
- (2) Children related by blood, marriage, or adoption, and residing in the same house; or
- (3) Grandparents, grandchildren, cousins, aunts, uncles, nieces, nephews, brothers, and sisters of the JOBS participant who reside in the same household; or
- (4) Emancipated minors and unrelated children living under the care of the JOBS participant; or
- (5) Children for whom the participant is legally responsible; or
- (6) A relative of a JOBS participant whose well-being and safety is the responsibility of the JOBS participant but who does not reside in the same household as the JOBS participant.

Authority G.S. 108A-29; 45 C.F.R. 250.10.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41H - ADOPTION STANDARDS

SECTION .0400 - ADOPTION ASSISTANCE:
GENERAL

.0405 CATEGORIES OF ASSISTANCE AND
EXTENT OF BENEFITS

(a) There are ~~four~~ three categories of adoption assistance:

- (1) monthly cash payments;
- (2) vendor payments to providers of medical services;
- (3) vendor payments to providers of psychological, therapeutic, and remedial services.
- ~~(4) vendor payments to providers of legal services for the filing of adoption proceedings.~~

(b) A child may be determined eligible for more than one category of assistance.

(c) Vendor payments from adoption assistance to providers of medical services not covered by Medicaid or other medical benefits shall not exceed twelve hundred dollars (\$1,200) per year per child.

(d) Vendor payments from adoption assistance to providers of psychological, therapeutic, and remedial services shall not exceed twelve hundred dollars (\$1,200) per year per child.

~~(e) Vendor payments from adoption assistance to providers of legal services shall not exceed two hundred fifty dollars (\$250.00) per child.~~

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

.0407 ELIGIBILITY REQUIREMENTS FOR
VENDOR PAYMENTS

(a) Prior to the child's receipt of vendor payment benefits from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services, ~~or to providers of legal services~~, the following eligibility factors must be determined:

- (1) The child is legally clear for adoption, or must have been legally adopted;
- (2) The child is, or was, the placement responsibility of a North Carolina agency authorized to place children for adoption at the time of adoptive placement;
- (3) The child has special needs that create a financial barrier to adoption;
- (4) Reasonable but unsuccessful efforts have been made to place the child for adoption without the benefits of adoption assistance; or
- (5) The child's special needs, though pre-existing, are detected only after his placement into an adoptive home.

(b) The child must be under eighteen years of age.

(c) A child's eligibility for vendor payment benefits from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services shall be determined on the basis of documentation of:

- (1) a known and diagnosed medical, mental, or emotional condition that will require periodic treatment or therapy or a medical or remedial nature; or
- (2) a potential handicap due to hereditary tendency, congenital problem, birth injury, or other documented high risk factor leading to substantial risk of future disability.

(d) A child's eligibility for vendor payment benefits from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services may be determined at any time during the child's minority if the medical, mental, or emotional condition, congenital problem, birth injury, or other documented problem is determined to have been pre-existing at the time of his placement into an adoptive home.

(e) Prior to the child's receipt of vendor payment benefits from adoption assistance for which he is eligible, the adoptive parents must enter into an agreement with the child's agency to indicate the extent to which they desire the child to participate in this component of the benefits program. The adoption assistance agreement must be renewed on an annual basis once the child begins to receive benefits so long as the child remains eligible to receive vendor benefits, or as long as the parents wish him to receive these benefits.

(f) For a child to receive vendor payment benefits from adoption assistance, North Carolina residency is not a requirement for the child and adoptive parents.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

.0408 PROCEDURES/REIMBURSEMENT OF
ADOPTION ASSISTANCE BENEFITS

(a) Adoption assistance benefits for which the child may be eligible ~~with the exception of vendor payments for legal fees~~, will become effective the first month following the month in which the final order of adoption is issued.

(b) Claims from service providers and monthly cash assistance will be reimbursed or provided from adoption assistance funds in accordance with policies established by the Division of Social Services, subject to the following limitations:

- (1) Vendor payments to medical providers and to providers of psychological, therapeutic, and remedial services will be made only for treatment or services given to alleviate or correct those special conditions for which the child has been determined eligible to receive benefits.
- (2) Vendor payments will not be made to reimburse providers for the following:
 - (A) routine medical examinations;
 - (B) illnesses or conditions not related to or resulting from the conditions for which the child was determined eligible for vendor payments;
 - (C) services or treatment provided to the child prior to entry of the final order of adoption; and
 - (D) services or treatment that may have been provided on or after the first day of the month following the month in which the child's eligibility ceases.
- (c) No local match, in terms of dollars, is required for funds for those children certified to receive benefits under the State Fund for Adoptive Children with Special Needs for whom the final order of adoption is entered on or before June 30, 1982, or for children who are the placement responsibility of licensed private child-placing agencies with the exception of monthly cash payments for those children who are eligible for benefits from Title IV-E of the Social Security Act.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

SECTION .0500 - OUT-OF-STATE ADOPTION FEES - GENERAL

.0501 PURPOSE OF OUT-OF-STATE ADOPTION SERVICE FEES

- (a) Out-of-state adoption service fees are established as part of the state-wide permanency planning effort for the purpose of providing services to foster children to assist in finding permanent adoptive homes for them.
- (b) This adoption service fee is provided to county departments of social services for payment of service fees to obtain adoption services from out-of-state adoption agencies, including assisting with the costs of:
 - (1) recruiting and securing an adoptive home for the child;
 - (2) ~~Pre-placement~~ pre-placement services to family and child;
 - (3) post-placement services to family and child;
 - (4) post-finalization services.

(c) The adoption service fee is designed to provide financial assistance to enable county departments of social services having legal placement and consenting authority of children to expand their adoptive family recruitment through referrals to out-of-state adoption agencies that specialize in hard-to-place children.

(d) The Division of Social Services will provide a maximum of one thousand eight hundred dollars (\$1800) per child for adoption service fees contracted for between a county department of social services and an authorized out-of-state adoption agency.

~~(e) The Division of Social Services will provide payment for costs of transportation necessary to facilitate out of state placements. Payments will be made up to the maximums established by the Social Services Commission for Transportation Services under 40 NCAC 42N.~~

Statutory Authority G.S. 48-1; 143B-153.

.0502 GENERAL ELIGIBILITY REQUIREMENTS

(a) The county department of social services having legal placement responsibility for a child shall submit an application for payment of service fees to the Division of Social Services, Children's Services Branch.

(b) The application shall provide documentation of the following:

- (1) that the agency making application has legal placement and consenting authority for the child;
- (2) that the child is legally cleared for adoption;
- (3) that the child is one who is considered hard to place due to such factors as:
 - (A) age;
 - (B) race;
 - (C) physical, mental, or emotional handicap; and
 - (D) being a member of a sibling group;
- (4) that the child is registered on the North Carolina Adoption Resource Exchange.

(c) To the extent funds are available, the Division of Social Services will approve the payment of an adoption service fee ~~or the payment of transportation fees, or both,~~ and will notify the county in writing of this approval.

(d) The county department of social services will send the division of social services a copy of the purchase of service agreement negotiated with the out-of-state provider and will notify the Division of the dates payments are due.

(e) The Division will retroactively approve payment of purchase of service fees due out-of-state agencies for service agreements a county

department may have entered into between July 1, 1980, when funding for this program was appropriated, and March 23, 1981, the date of authorization of these Rules by the Social Services Commission.

~~(f) In instances where payment for transportation costs is requested, the county department of social services will document that payment for transportation is not otherwise available to facilitate the placement.~~

Statutory Authority G.S. 48-1; 143B-153.

SECTION .0600 - NON-RECURRING ADOPTION COSTS: GENERAL

.0601 PURPOSE OF REIMBURSEMENT OF NON-RECURRING ADOPTION EXPENSES

Reimbursement of non-recurring adoption expenses incurred by adoptive parents shall be provided by county departments of social services in accordance with requirements set forth in Section .0600 et seq. of 10 NCAC 41H to facilitate the adoption of children with special needs, and in accordance with procedures established by the State Division of Social Services.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

.0602 DEFINITIONS

(a) Non-recurring costs for which reimbursement can be claimed are those costs associated with the adoption that are incurred prior to or at the time of the adoption and which include:

- (1) reasonable and necessary adoption fees;
- (2) court costs; and
- (3) attorney's fees.

(b) Other non-recurring expenses covered in this Section includes costs of adoption incurred by or on behalf of the adoptive parents and for which they carry the burden of payment, including:

- (1) adoptive home study;
- (2) physical examinations;
- (3) psychological examinations, when required by an agency;
- (4) supervision of the placement prior to entry of the final order of adoption; and
- (5) transportation and costs of lodging and food for the child and adoptive parents when necessary to complete the adoptive process.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

.0603 REQUIREMENTS

The non-recurring expenses of a person who adopts a child with special needs will be reimbursed up to the maximum allowable amount based on the following criteria:

- (1) The child cannot or should not be returned to the home of his parents.
- (2) The child has been determined by a county department of social services to have special needs due to one or more of the following:
 - (a) a physical, mental, or emotional disability, or high risk factor for such due to background history; or
 - (b) is a member of a sibling group being placed together.
- (3) Reasonable but unsuccessful efforts have been made to place the child into an adoptive home without providing adoption assistance, except when it would be against the best interests of the child to seek a family other than the one with which he has been living as a foster child and with whom he has established significant emotional ties.
- (4) On or before entry of the final order of adoption a written agreement concerning reimbursement of non-recurring costs is entered into between a county department of social services and a person who adopts a child with special needs. Exceptions to this requirement include:
 - (a) those whose adoptions were completed prior to January 1, 1987 but the non-recurring adoption expenses were paid after January 1, 1987; and
 - (b) those whose adoptions were completed between January 1, 1987 and on or before June 14, 1988.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

.0604 REIMBURSEMENT FOR NON-RECURRING ADOPTION EXPENSES

(a) The maximum amount for which adoptive parents will be reimbursed for non-recurring adoption expenses shall not exceed two thousand dollars (\$2,000).

(b) No maximum rates for specific reimbursable services shall be established by the State Division of Social Services or by any county department of social services.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

CHAPTER 44 - DIVISION OF YOUTH SERVICES

SUBCHAPTER 44B - NORTH CAROLINA
MINIMUM STANDARDS FOR JUVENILE
DETENTION FACILITIES

SECTION .0400 - STANDARDS FOR
ADMISSIONS

.0402 ADMISSION PROCEDURES

Male staff shall supervise the admission of the male juveniles and the female staff shall supervise the admission of the female juveniles. The intake process during admission shall include but need not be limited to the following:

- (1) The juvenile shall be searched and all his personal property removed, signed for and stored. Illegal drugs and weapons found on a juvenile shall be given to the juvenile's court counselor or other appropriate authorities.
- (2) An intake interview shall be conducted to obtain personal and medical data, discuss the detention program, and to explain the detention center's rules and regulations, a written copy of which shall be given to the juvenile to read and keep.
- (3) A juvenile's body shall be examined for lice, bruises, abrasions, or unusual marks and symptoms of communicable disease. The findings shall be recorded and unusual findings brought to the attention of the appropriate medical personnel and the juvenile's court or social worker.
- (4) Each juvenile shall take a shower and be given clean clothing and toiletries provided by the detention facility. Appropriate clothing shall be provided. The child's clothes shall be washed and stored, ready for his court appearance or release.
- (5) ~~During the admissions process, staff may limit juveniles to two completed local or collect long distance telephone calls to family members or other approved individuals, exclusive of attorneys.~~
- (5) (6) Any person or institution who has cause at any time during the juvenile's stay to suspect that a juvenile has been or is being abused or neglected shall report the case to the Director of the Department of Social Services in the county where the detention center is located or where the juvenile resides, in accord with G.S. 7A-543.

Statutory Authority G.S. 7A-543; 134A-39; 153A-220; 153A-221; 153A-221.1.

SECTION .0500 - STANDARDS FOR DAILY
PROGRAMS AND SERVICES

.0502 FOOD SERVICES

Food services of the detention facility shall provide a diet that meets the Recommended Dietary Allowances of the National Academy of Sciences, which is incorporated by reference into these Rules, in accordance with G.S. 150B-14(c). Menus shall be reviewed annually by a qualified dietitian. Menus, which shall be followed, shall be planned and available for review at least one week in advance. Three meals, of which two are hot meals shall be served at regular times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast. Meals shall be served three times a day. Foods shall be properly stored, cooked and served in compliance with sanitary rules adopted by the Commission for Health Services, pursuant to provisions of G.S. 153A-226. Menus shall take into account the cultural differences in food taste, religious beliefs and shall be home-cooked type meals. Provisions shall be made to provide special diets as prescribed by appropriate medical or dental personnel. Menus for special diets shall be reviewed and approved in a timely manner by a registered dietitian. Food shall never be withheld as a punishment. Denying a juvenile desserts or serving him smaller portions of any food shall not be used as punishment. Snacks which shall not replace meals, shall be provided at least ~~twice~~ once a day ~~including one~~ to be provided during the evening hours. Provisions shall be made for the feeding of juveniles who have been without food for some time and who are admitted after the kitchen is closed for the day. Dated invoices or bills indicating all foods served to juveniles and dated menus showing meals as served shall be kept in accordance with the required fiscal and programmatic records retention schedule of the facility. Invoices shall show specific kinds and amounts of food purchased and identify the vendor. If it is necessary to purchase meals from an outside agency, a written agreement shall be drawn to meet standards of service, in order to assure conformity to the minimum standards.

Statutory Authority G.S. 134A-20; 134A-39; 153A-221; 153A-221.1.

.0507 USE OF DEFENSIVE AND
RESTRAINING FORCE

(a) The use of corporal punishment is prohibited. Defensive or restraining force may be used within reason for self-protection, protection of juveniles, or enforcement of discipline. Corporal punishment or physical assault on a juvenile by a staff member shall be regarded as cause for immediate suspension pending dismissal.

(b) Corporal punishment is defined as slapping, pinching, kicking, arm-twisting, hair-pulling, or

any other offensive act intended to result in physical pain to the juvenile. Personal debasement of a juvenile such as use of violent, profane or abusive language and any other action on the part of a staff member toward a juvenile which would be injurious is prohibited. This includes, but is not limited to deliberate neglect or deliberate failure to respond to the juvenile's needs; e.g., refusing to provide necessary medical care or withholding food for punishment. Any staff member who has reason to suspect abuse or neglect of a juvenile shall report directly to the Director of the Department of Social Services in either the county in which the detention center is located or the county in which the juvenile resides, in accord with G.S. 7A-543. There shall be no deviation from strict adherence to this policy. In a situation where there is doubt as to the applicability of a policy in a given situation, it shall be reported as if a violation had occurred so that discretion as to enforcement of that policy will be in the hands of the proper authority.

Statutory Authority G.S. 7A-543; 153A-221; 153A-221.1.

.0508 RUNAWAYS

(d) Upon return to the facility, the juvenile shall be confined for a period of up to 24 hours, during which time isolation shall be documented as established in Rule .0506 of this Section, and in addition, the juvenile shall be counseled regarding the event. Confinement for periods of over 24 hours ~~must~~ shall be authorized by reported to the Manager of Detention Services, within 24 hours of the completion of the first 24 hours of confinement of the juvenile, and reviewed every 24 hours by the Detention Manager or a designated administrator not involved in the incident. When any runaway from one of the training schools is apprehended and immediate transportation back to that school is not possible, detention care shall be provided. Detention care shall be provided where necessary for juveniles who have run away from other jurisdictional districts within the state or from other states and who require secure custody pending transportation.

Statutory Authority G.S. 7A-574; 134A-39; 153A-221; 153A-221.1.

.0510 VISITATION AND COMMUNICATION

(a) Each detention facility shall develop written policies regarding visits to visitation and communication with children in detention. Visiting regulations shall be flexible and visitation by appropriate people shall be encouraged.

- (1) Visitation by parents, guardians or custodians shall be approved by the committing agency in concurrence with the juvenile detention home center director. Visits by ~~their~~ the juvenile's court counselor, attorney, or social services worker shall be facilitated. The written ~~visiting~~ visitation and communication regulations shall be available to ~~the children~~ juveniles and ~~to~~ their parents. Visitation privileges may be revoked if misused or visitation regulations are violated. by parents, etc.
- (2) All children shall have the right to correspond in writing to their parents, guardians, court officials, attorneys and social services workers. No correspondence to or from juveniles shall be censored. However, ~~incoming~~ mail may be checked for contraband. Writing materials and postage shall be made available to children in quantities approved by each center's communication policy.
- (3) The juvenile may make telephone calls, with the approval of staff, at times designated by the center's communication policy. Calls shall be made only to family members, guardians, custodians, juvenile justice or social services professionals, or other individuals approved by the Detention Director. Juveniles shall be given access by phone and by visitation to their attorney.

(b) All the above regulations are subject to the limitations specifically ordered by the court.

Statutory Authority G.S. 153A-221; 153A-221.1.

.0519 RECORDS AND REPORTS

Each detention facility shall maintain records on the activities of each juvenile to include:

- (1) detention and release orders;
- (2) admission and release dates;
- (3) clothing and personal property inventory;
- (4) medical, educational, psychological, psychiatric, etc., information;
- (5) staff observation reports;
- (6) isolation reports;
- (7) room check reports;
- (8) runaway reports;
- (9) accident or injury reports;
- (10) group workers' log--important observations on individual juveniles: their relationships to others, their attitude and behavior, and their activities as they affect the state of the group;
- (11) monthly statistical report to the Division of Youth Services;

(12) report of a juvenile's death in the detention facility, to be filed within five days to the local or district health director and to the Division of Youth Services.

(13) ~~personal data card for detention personnel, completed on new employees and sent to the Division of Youth Services.~~

Statutory Authority G.S. 153A-220; 153A-221; 153A-221.1.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the EHNHR - Division of Coastal Management intends to amend rules cited as 15A NCAC 7H .0208 and 15A NCAC 7J .0409.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 4:00 p.m. on March 21, 1991 at the Holiday Inn, 1706 North Lumina Avenue, Wrightsville Beach, NC.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive written comments up to the date of the hearing. Anyone desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings. Additional information concerning the hearing or the proposed amendments may be obtained by contacting James Wuenschel, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-2293.

EXPLANATION OF AMENDMENT TO 15A NCAC 7H .0208

The proposed amendment to 15A NCAC 7H .0208 changes the definition of Primary Nursery Areas to include those designated by the Wildlife Resources Commission in waters under its jurisdiction. The present definition includes only PNAs designated by the Marine Fisheries Commission in its jurisdictional waters.

The result of this amendment would be to apply existing restrictions on permissible activities within PNAs to additional areas. These restrictions include the following. Navigation channels, canals and boat basins must be aligned

or located so as to avoid PNAs. Drainage ditches may not have a significant adverse effect on PNAs. Marinas which require dredging may not be located in PNAs or in areas which require dredging through PNAs for access. Civil penalties for unpermitted activities in PNAs may be higher than those for areas not so designated. Other restrictions on activities within or contiguous to PNAs may exist in local land use plans.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0208 USE STANDARDS

(a) General Use Standards

- (4) Primary nursery areas are those areas in the estuarine system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are officially designated and described by the N.C. Marine Fisheries Commission in 15A NCAC 3B .1405 and by the N.C. Wildlife Resources Commission in 15A NCAC 10C .0110.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

SUBCHAPTER 7J - PROCEDURES FOR HANDLING MAJOR DEVELOPMENT PERMITS: VARIANCE REQUESTS: APPEALS FROM MINOR DEVELOPMENT PERMIT DECISIONS: AND DECLARATORY RULINGS

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

.0409 CIVIL PENALTIES

(e) Notice of Assessment.

- (1) The Commission hereby delegates to the director the authority to assess civil penalties according to the procedures set forth in this Rule. The director shall assess a civil penalty of not less than fifty dollars (\$50.00) for a minor development violation and not less than one hundred dollars (\$100.00) ~~for a major development violation in all cases where he has determined that the respondent has committed a violation.~~ plus an amount equal to the application fee for a major development violation.

Statutory Authority G.S. 113A-124;
113A-126(d).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Water Treatment Facility Operators Board of Certification intends to amend rule cited as 15A NCAC 18D .0201 and adopt rule cited as 15A NCAC 18D .0206.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 9:30 a.m. on March 12, 1991 at the Jane S. McKimmon Center, N.C. State University, Western Boulevard, Raleigh, NC.

Comment Procedures: Any person requiring information may contact Mr. John C. McFadyen, P.O. Box 27687, Raleigh, NC 27611, Phone (919) 733-0379. Written comments may be submitted to the above address 30 days prior to the public hearing. Written and oral comments may also be presented at the public hearing. Notice of an oral presentation must be given to the above address at least 3 days prior to the public hearing. Action on rules may be taken at commission meeting scheduled to immediately follow the public hearing.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

.0201 GRADES OF CERTIFICATION

Applicants for the various grades of certification shall meet the following educational and experience requirements:

- (1) Grade C shall be a high school graduate or equivalent plus one year of acceptable experience, or be a college graduate with at least 12 semester hours in the physical or natural sciences and have three months of acceptable experience, or have six months of acceptable experience while holding a Grade C-Well certificate.
- (2) Grade B shall be a college graduate with a degree in the physical or natural sciences or equivalent and have one year of acceptable experience, or have one year of acceptable

experience while holding a Grade C certificate, or have six months acceptable experience while holding a Grade B-Well certificate.

- (3) Grade A shall have one year of acceptable experience while holding a Grade B certificate.
- (4) Grade C-Well shall be a high school graduate or equivalent and have six months of acceptable experience, or attend an approved C-Well school with no experience.
- (5) Grade B-Well shall have one year of acceptable experience while holding a Grade C-Well certificate.
- (1) GRADE A shall have one year acceptable experience while holding a Grade B certificate and have satisfactorily completed an approved A school.
- (2) GRADE B shall:
 - (a) Be a college graduate with a bachelor of science degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience, or
 - (b) Have one year of acceptable experience while holding a Grade C certificate and have satisfactorily completed an approved B school.
- (3) GRADE C shall:
 - (a) Be a college graduate with a bachelor of science degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience, or
 - (b) Be a high school graduate or equivalent, have six months acceptable experience and have satisfactorily completed an approved C school.
- (4) GRADE A-WELL shall have one year of acceptable experience while holding a Grade B-Well certificate and have satisfactorily completed an approved A-Well school.
- (5) GRADE B-WELL shall:
 - (a) Be a college graduate with a bachelor of science degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience, or
 - (b) Have one year of acceptable experience while holding a Grade C-Well certificate and have satisfactorily completed an approved B-Well school.
- (6) GRADE C-WELL shall:
 - (a) Be a college graduate with a bachelor of science degree in the physical or natural

sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience, or

- (b) Have one year of acceptable experience while holding a Grade C-Well certificate and have satisfactorily completed an approved C-Well school.

Statutory Authority G.S. 90A-21(c); 90A-22; 90A-23.

SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

.0206 CERTIFIED OPERATOR REQUIRED

- (a) There shall be an operator in responsible charge for each water treatment facility.
- (b) There shall be an operator holding at least a Class C surface certification or above regularly assigned to be on duty when a Class A, Class B, or Class C surface water treatment facility is treating water. Implementation of this requirement is subject to the following provisions:
- (1) Upon the effective date of this rule, each affected facility shall have two years to come into compliance;
 - (2) Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office within 24 hours or at the start of the next regular business day of such vacancy;
 - (3) Upon such vacancy the facility shall have 90 days to fill the position with a certified Class C or above operator or shall have pending approval for a temporary certification for the operator;
 - (4) Within 18 months of vacancy the facility shall have a certified Class C or above operator assigned to fill the vacancy.

Statutory Authority G.S. 90A-20; 90A-28; 90A-29.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Landscape Architects intends to amend rule cited as 21 NCAC 26 .0105.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 11:30 a.m. on March 7, 1991 at the First Floor Conference Room, Caswell Building, 3700 National Drive, Raleigh, NC 27612.

Comment Procedures: Persons wishing to present oral data, views, or arguments on a proposed rule may file a notice with the Board at least 10 days prior to the hearing. Any person may also file a written submission concerning data, comments or arguments at any time until the date of the hearing. Submissions should be mailed to the Board at P.O. Box 26852, Raleigh, NC 27611.

CHAPTER 26 - LICENSING BOARD OF LANDSCAPE ARCHITECTS

SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

.0105 FEES

- (c) Examination fees shall be ~~three hundred seventy-five dollars (\$375.00)~~ three hundred ninety-five dollars (\$395.00) for a complete examination, and shall be paid prior to the examination.

Statutory Authority G.S. 89A-3(c); 89A-6.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Rules filed with changes are noted with **** Amended, ** Adopted**. Please contact this office if you have any questions.*

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the **List of Rules Codified** and are noted as *** Correction**. These changes do not change the effective date of the rule.*

**TITLE 5
DEPARTMENT OF CORRECTION-**

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .0600 - CUSTODIAL CLASSIFICATIONS

.0604 COMMUNITY VOLUNTEER PROGRAM

(a) General. It is recognized that private citizens serving as community volunteers can be a valuable resource for the Department of Correction and the Division of Prisons. Community volunteers can attain firsthand knowledge of the many problems and responsibilities confronting both the staff and offender population of the Division of Prisons. As concerned, "credible witnesses," volunteers can aid significantly in developing public support for adequate correctional facilities and staff. Volunteers represent a unique resource for working the offender population by supplementing staff, providing goods and services not otherwise available, and bridging the gap between institutions and communities.

(b) Eligibility.

- (1) A volunteer is any person who provides goods or services to the Division of Prisons of his or her own free will and does so for no financial gain.
- (2) Any citizen of good character, at least 18 years of age and sufficiently mature to handle the responsibilities involved is eligible for consideration to become a community volunteer.
- (3) A Community Volunteer Application Form (DC-345) must be completed by each applicant who wishes to provide ongoing service as a volunteer at a correctional facility. Persons who provide a one time service either as an individual or member of a group may not be required to complete an application. They will sign a statement covering one time activity.
- (4) An investigation will be conducted on each applicant following the same general procedure used with applicants for professional employment excluding Criminal Justice Forms, physical exams and fingerprints (optional). The DCI system may be used to ascertain criminal records. Investigations must be completed before the certification process is completed and identification card issued.
- (5) Individuals with criminal records may be considered to serve as volunteers after one year of unsupervised involvement in the community with no new arrests.
- (6) Ex-inmates who do not meet the criteria, (Paragraph (b)(4) of this Rule), may be approved as community volunteers with the approval of the Director of the Division of Prisons.

- (7) Relatives of an inmate may not serve as a volunteer with the resident to whom they are related. They cannot be volunteers in situations where an immediate relative is housed. Immediate relative is defined as parent, child, siblings, in-laws, aunt/uncle, or grandparents.
 - (8) The approving authority for community volunteers is the Area Administrator Institution/Head or their designated representative.
 - (c) Recruiting.
 - (1) Recruiting of volunteers is a staff responsibility under the supervision of the facility's Volunteer Coordinator.
 - (2) Recruiting efforts may include the public media, civic organizations, appropriate educational institutions, public agencies and individuals.
 - (3) Active volunteers and members of the facility's Community Resource Councils may be used in recruiting efforts.
 - (d) Training.
 - (1) Each applicant who has been approved as a volunteer will be provided with adequate orientation and training by the Volunteer Coordinator in accordance with DOP Policies and Procedures entitled "Community Volunteer Program Training Program".
 - (2) Training should be offered on a continuing basis to help volunteers function with maximum effectiveness within the facility.
 - (3) A "Volunteers Make A Difference Handbook" will be provided for each volunteer.
 - (4) Evaluation is a basic technique in training. Each volunteer should be evaluated on a regular basis and at least yearly.
 - (5) Volunteers should be afforded the opportunity to evaluate their own progress and development and the situation in which they are involved.
 - (6) Upon completing the required training program, a volunteer who will be providing service at a facility will be certified and issued a blue identification card.
 - (7) After completing the required training program and a minimum of one month probationary period on-site participation, a volunteer who will serve as a Community Leave Sponsor will be certified and be issued a salmon color identification card. The Institution Head or Center Superintendent can require a volunteer to serve a two month probationary period before certification and the issuance of an identification card.
 - (e) Placement.
 - (1) Volunteers will be placed on approved assignments according to their interests, and capabilities, and needs of the facility and in accordance with the security requirements of the facility. Examples of possible placements include:
 - (A) Counseling (individual, group, family),
 - (B) Drug therapy,
 - (C) Library Assistance,
 - (D) Education related (tutoring, teaching classes, vocational),
 - (E) Religious related (church services, Bible study, Yokefellow Prison Ministry),
 - (F) Staff assistance (clerical, administrative),
 - (G) Arts and Crafts,
 - (H) Recreation,
 - (I) Transportation,
 - (J) Pre-release training,
 - (K) Alcoholics/Narcotics Anonymous,
 - (L) Community Leave Sponsor,
 - (M) Community Resource Council,
 - (N) Special events.
 - (2) A job description of the assignments available in the correctional facility is essential. It should include agreement as to frequency and duration of the volunteer service. Both the volunteer and the staff member who will supervise activity should review the job description and the volunteer will indicate his understanding of the job description by signing the agreement.
 - (f) Supervision.
 - (1) Each volunteer will be assigned to an immediate supervisor.
 - (2) It will be the responsibility of the immediate supervisor to direct and support the volunteer in carrying out his assigned responsibility.
 - (3) Community Volunteer Certification may be withdrawn by the approving authority for misconduct, failure to perform according to the agreement or activities that undermine the objectives of the agency. The reason for the action must be documented to the Area
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Administrator/Institution Head with a copy retained in the facility file. Volunteer will be notified in writing of termination.

(g) Outside Activities.

- (1) When a volunteer is certified as a Community Leave Sponsor, he may be authorized to take eligible Minimum Custody inmates outside of the facility for approved activities.
- (2) Outside activities that are approved should be limited to those that improve the skills of the eligible inmate, develop more responsible behavior, or prepare him for successful re-entry.
- (3) Assignment to the required Minimum Custody Level should not be the sole criteria for approval of inmates to participate in outside activities through the Community Volunteer Program. Current progress reports, evaluations, community receptivity, and the general criteria listed under the Home Leave Program, 5 NCAC 2F .0603, should be considered when authorizing any leave.
- (4) The immediate supervisor will thoroughly orient the community volunteer and the inmate to the conditions of the leave before an outside activity is approved.
- (5) Form DC-142 must be completed by each volunteer and each inmate who are involved in community volunteer leaves.
- (6) A file copy of DC-142 will be retained in the field jacket of each participating inmate. The original DC-142 will be retained in the facility file.
- (7) When a community volunteer sponsored outside activity for an inmate is approved, Form DC-260 must be completed. The Passbook will be issued to the inmate at the time of his departure. It must be kept on his person during the period of the activity and returned to the staff when the activity is concluded.
- (8) The maximum number of hours authorized for any leave may not exceed six hours. Time may be extended to a maximum of 10 hours for special activities with approval of the Area Administrator/Institution Head Command Manager. An inmate may be allowed a maximum of three leaves per week.
- (9) Community volunteer leaves must terminate no later than 12:00 midnight.
- (10) A community leave will be authorized on a one volunteer to one inmate ratio. Exceptions may be approved by the Institution Head/Center Superintendent for inmates in level III only. This should be permitted only in the case of organized activities. However, no approved volunteer shall be allowed to supervise more than three inmates.
- (11) All leaves must be explicit as to event and location.
- (12) The volunteer must agree to refrain from using any alcoholic beverages, narcotics or other drugs except those lawfully prescribed for him while sponsoring an inmate on any outside activity.
- (13) The community volunteer must agree to return the inmate to the facility or to report by telephone to the facility if a condition of the leave is broken.
- (14) Female volunteers may not sponsor male inmates; male volunteers may not sponsor female inmates on outside activities.
- (15) The community volunteer must remain with the inmate at all times during the outside activity.

(h) Violations.

- (1) Inmates participating in outside activities are subject to the Rules and Regulations of the Division of Prisons, conditions specified on DC-142, and any special conditions that may be imposed by the approving authority.
- (2) Any violations of Rules and Regulations or conditions of the leave will be handled through disciplinary procedure. Form DC-142 shall be considered as a direct order specifying in writing the conditions of the community volunteer pass for the purposes of disciplinary action.
- (3) If an inmate fails to voluntarily return from a community volunteer leave for the first time, but voluntarily returns within 24 hours, he will be referred to the Area/Institution Disciplinary Committee in accordance with departmental procedures. DC-142 may be used as evidence against the inmate. If the inmate returns involuntarily or if he returns voluntarily following a second escape from an outside activity, he may be prosecuted in court. In these cases, Form DC-142 should be presented to the Solicitor or District Attorney for documentation.

(i) Suspension of Outside Activities. Outside activities of an inmate under the Community Volunteer Program may be suspended by the approving authority for reasons documented on Form DC-121R. A copy of the form must be submitted to the Area Administrator/Institution Head/Command Manager.

(j) Program Documentation.

- (1) A Community Volunteer Application (DC-345) must be on file for each individual volunteer who performs ongoing volunteer activity.

- (2) Groups or persons who provide a one-time special volunteer service, such as a church group, do not have to complete individual applications. They will sign a statement for a one-time activity. Staff will record the date of activity, name of group or organization, number of members, and approximate number of inmates in attendance during the activity. This will be submitted on the DC-256 (Monthly Volunteer Activity Report).
- (3) A Monthly Volunteer Activity Report Form DC-256 will be completed monthly by each unit facility/institution. These individual reports will then be submitted to the Area/Command Office for computation into one area/complex Area/Command report. This Area/Command report is then sent to the Division's Volunteer Services Program Consultant.
- (4) Documented volunteer services will be recognized as partial fulfillment of training and experience requirements for state employment, pursuant to policies adopted by the State Personnel Commission. Staff members are encouraged to provide letters of documented volunteer services when requested by a volunteer.
- (k) Recognition of Volunteers.
 - (1) Facilities should have an annual event to show appreciation to volunteers for the services they provided during the preceding year. Examples of recognition activities include presentation of certificates of appreciation and an informal reception at the facility or in the community.
 - (2) Efforts will be made by the Department of Correction to recognize "outstanding volunteers".
- (l) Special Provision.
 - (1) Volunteers shall be exempt from the provisions of the State Personnel Act and other provisions of law and regulations. They must, however, comply with all Division of Prisons' Policies and Procedures.
 - (2) Volunteers are recognized to be covered under Article 31 and 31A of Chapter 143 of the General Statutes governing tort claims against State Departments and Agencies and the Defense of State Employees. They are not entitled to benefits under Chapter 97 of the General Statutes, the Workmen's Compensation Act.
 - (3) A person who is certified as a volunteer at one facility is not automatically certified at all facilities in the Division of Prisons. They must be certified at each facility following established Policies and Procedures. Persons wishing to serve at more than one facility may apply for permission through the Chain of Command with the final decision from the Director, Division of Prisons.
 - (4) A volunteer who violates Policies and Procedures and is dismissed by a facility is no longer eligible to be a volunteer in any facility in the Division of Prisons. They may submit an application to be reinstated after a three year period. Application will be processed as a new application, but past violation may be used during review process. A volunteer who is dismissed may appeal through the Division's Chain of Command.
 - (5) Identification cards will be issued for a maximum of one year. They may be renewed.
 - (6) Identification cards are the property of the Department of Correction. They must be surrendered upon request of the Department or when they expire.

History Note: Statutory Authority G.S. 148-4; 148-11;

Eff. February 1, 1976;

Amended Eff. March 1, 1991; December 1, 1984; March 5, 1981; March 17, 1978.

TITLE 17 DEPARTMENT OF REVENUE

CHAPTER 6 - INDIVIDUAL INCOME TAX DIVISION

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .0100 - FILING INDIVIDUAL INCOME TAX RETURNS

.0106 FEDERAL FORMS

If a taxpayer was a resident of North Carolina for the entire year, or if he moved into North Carolina during the year, he is not required to include a copy of his Federal income tax return with his North Carolina return. If a taxpayer moved from North Carolina during the year, or if he was a nonresident for the entire year, he must include a copy of his complete Federal return with his North Carolina return.

*History Note: Statutory Authority G.S. 105-152; 105-155; 105-251; 105-252; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1991; June 1, 1990; May 1, 1984.*

.0107 EXTENSIONS

(a) If an income tax return cannot be filed by the due date, an individual may apply for an automatic four-month extension of time to file the return. To receive the extension, an individual must file Form D-410A, Application for Automatic Extension of Time to File State Income Tax Returns, and pay the full amount of tax he expects to owe by the original due date of the return. In lieu of filing Form D-410A, an automatic four-month extension of time to file a North Carolina income tax return will be granted if an individual files Federal Form 4868, Application for Automatic Extension of Time, with the Internal Revenue Service, provided he submits a copy of the completed Form 4868 and full payment of the tax by the original due date of the return. When filing a copy of the Form 4868 in lieu of Form D-410A, an individual must clearly state that the form is for North Carolina; mark through the federal amounts shown on the form; enter the applicable amounts for North Carolina; and pay the tax due.

(b) A ten percent late payment penalty will apply on the remaining balance due if the tax paid by the due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due, including interest, must be paid with the income tax return before the expiration of the extension period to avoid the late payment penalty.

(c) An individual can apply for an additional extension beyond the automatic four-month extension by filing Form D-410, Application for Additional Extension of Time to File State Income Tax Returns, in duplicate. Extensions of time beyond the automatic four-month extension of time to file are granted only for very good reasons. In lieu of filing Form D-410, an additional extension of time will be granted if an individual files Federal Form 2688 with the Internal Revenue Service and includes a copy of the approved Form 2688 with his North Carolina return.

(d) A return may be filed at any time within the extension period but it must be filed before the end of the extension period to avoid the late filing penalty.

(e) This Rule applies to taxable years beginning on or after January 1, 1990.

*History Note: Statutory Authority G.S. 105-155; 105-157; 105-236(4); 105-160.6; 105-160.7;
105-262; 105-263;
Eff. February 1, 1976;
Amended Eff. February 1, 1991; June 1, 1990; May 1, 1984; June 1, 1982.*

.0111 MINIMUM GROSS INCOME FILING REQUIREMENTS

(a) The minimum gross income filing requirements for most people are shown in Chart A:

CHART A - FOR MOST TAXPAYERS

(1) Single.....	\$ 5,000
Single (age 65 or over).....	5,750
(2) Married - Filing Joint Return.....	\$ 9,000
Married - Filing Joint Return, (one age 65 or over).....	9,600
Married - Filing Joint Return, (both age 65 or over).....	10,200
(3) Married - Filing Separate Return.....	\$ 2,000
(4) Head of Household.....	\$ 6,400
Head of Household (age 65 or over).....	7,150
(5) Qualifying Widow(er) with dependent child.....	\$ 7,000
Qualifying widow(er) (age 65 or over).....	7,600

(b) If an individual was not required to file a Federal income tax return but had gross income inside and outside of North Carolina that equals or exceeds the amounts in Chart A, a Federal return must be completed and attached to the North Carolina return to show how the negative Federal taxable income was determined.

(c) The minimum gross income filing requirements for children and other dependents are shown in Chart B. The filing requirements in Chart B generally are applicable to those individuals who can be claimed as a dependent by another person (such as a parent).

Note: EARNED INCOME is salaries, wages, tips, professional fees, and other amounts received as pay for work actually done.

Note: UNEARNED INCOME is income other than earned income (salaries or wages). It is investment-type income and includes interest, dividends, and capital gains. Distributions of interest, dividends, capital gains, and other unearned income from a trust are also unearned income to a beneficiary of the trust.

CHART B - FOR CHILDREN AND OTHER DEPENDENTS

- (1) Single dependents neither blind nor 65 or older - You must file a return if:
 - (A) Your unearned income was one dollar (\$1.00) or more and the total of that income plus your earned income was more than five hundred dollars (\$500.00).
 - (B) Your unearned income was zero dollars (\$0.00) and the total of that income plus your earned income was more than three thousand dollars (\$3,000).
- (2) Single dependents 65 or older or blind - You must file a return if:
 - (A) Your earned income was more than three thousand seven hundred fifty dollars (\$3,750) [four thousand five hundred dollars (\$4,500) if 65 or older and blind], or
 - (B) Your unearned income was more than one thousand two hundred fifty dollars (\$1,250) [two thousand dollars (\$2,000) if 65 or older and blind], or
 - (C) Your gross income was more than the total of your earned income [up to three thousand dollars (\$3,000)] or five hundred dollars (\$500.00), whichever is larger, plus seven hundred fifty dollars (\$750.00) [one thousand five hundred dollars (\$1,500) if 65 or older and blind].
- (3) Married dependents neither blind nor 65 or older - You must file a return if:
 - (A) Your earned income was more than two thousand five hundred dollars (\$2,500), or
 - (B) You had any unearned income and your gross income was more than five hundred dollars (\$500.00), or
 - (C) Your gross income was at least five dollars (\$5.00) and your spouse files a separate Federal income tax return on Form 1040 and itemizes deductions.
- (4) Married dependents 65 or older or blind - You must file a return if:
 - (A) Your earned income was more than three thousand one hundred dollars (\$3,100) [three thousand seven hundred dollars (\$3,700) if 65 or older and blind], or
 - (B) Your unearned income was more than one thousand one hundred dollars (\$1,100) [one thousand seven hundred dollars (\$1,700) if 65 or older and blind], or
 - (C) Your gross income was more than the total of your earned income [up to two thousand five hundred dollars (\$2,500)], or five hundred dollars (\$500.00), whichever is larger, plus six hundred dollars (\$600.00) [one thousand two hundred dollars (\$1,200) if 65 or older and blind], or
 - (D) Your gross income was at least five dollars (\$5.00) and your spouse files a separate Federal income tax return on Form 1040 and itemizes deductions.

*History Note: Statutory Authority G.S. 105-134.2; 105-134.5; 105-134.6(c); 105-152; 105-262;
Eff. June 1, 1990;
Amended Eff. February 1, 1991.*

.0112 JOINT RETURNS

- (a) G.S. 105-152.1 requires that a husband and wife file a joint State return if:
- (1) They file a joint Federal income tax return, and
 - (2) Both spouses are residents of North Carolina or both spouses had North Carolina taxable income.

All other individuals must file separate returns.

(b) On joint returns, both spouses are jointly and severally liable for the tax due. However, if a spouse has been relieved of any liability for Federal income tax under the Internal Revenue Code as an "innocent spouse" attributable to a substantial understatement by the other spouse, the "innocent spouse" would not be liable for the State income tax attributable to such understatement by the other spouse.

(c) If an individual and his spouse file a joint return using different last names, they should separate the names with "and". For example, "John Brown and Mary Smith".

(d) If an individual files a joint Federal return but files a separate North Carolina return, he must complete a separate Federal return and attach it to his North Carolina tax return to show how his Federal taxable income would be determined on a separate Federal return. In lieu of completing a

separate Federal return, an individual may submit a schedule showing the computation of the separate Federal taxable income provided a copy of the joint Federal income tax return is provided with the North Carolina return.

*History Note: Statutory Authority G.S. 105-152; 105-152.1; 105-262;
Eff. June 1, 1990;
Amended Eff. February 1, 1991.*

.0117 TRANSITIONAL ADJUSTMENTS

The following transitional adjustments are required because of differences in the way State and Federal law treated certain tax transactions prior to January 1, 1989.

- (1) Amounts that were included in the basis of property under Federal law but not under State law prior to January 1, 1989, must be added to taxable income in the year of disposition of the property. These adjustments include the increase in basis for Federal gift tax paid on property received as a gift and in certain cases where the individual was permitted under Federal law to capitalize certain expenditures for interest and taxes.
- (2) Amounts that were included in the basis of property under State law but not under Federal law prior to January 1, 1989, must be deducted from an individual's taxable income in the year of disposition of the property. Deductions of this type include the increase in basis for State gift tax paid on property received as a gift and certain business expenditures that an individual elected to expense under Section 179 of the Internal Revenue Code but which were required to be capitalized for State income tax purposes.
- (3) A loss or deduction that was incurred or paid and deducted in full for North Carolina income tax purposes under prior State law in a taxable year beginning before January 1, 1989, but was carried forward and deducted from Federal taxable income in a taxable year beginning on or after January 1, 1989, must be added to taxable income.

In determining the amount to add back, a capital loss from taxable years beginning prior to January 1, 1989, must be applied before applying a capital loss that was sustained in a taxable year beginning on or after January 1, 1989.

EXAMPLE: The full amount of a capital loss incurred in 1988 would have been deductible on an individual's 1988 State income tax return but on his Federal income tax return the amount of the deductible loss would have been limited to his capital gains plus three thousand dollars (\$3,000) [one thousand five hundred dollars (\$1,500) if married and filing a separate return]. Any remaining loss could be carried forward to subsequent tax years and deducted on his Federal income tax return in computing his Federal taxable income. In this instance, the individual must add back each year that portion of the 1988 loss deducted from his Federal taxable income in arriving at the amount of his North Carolina taxable income.

[An individual had a six thousand five hundred dollar (\$6,500) capital loss in 1988 which was limited to three thousand dollars (\$3,000) on his Federal income tax return but which was deducted in full on the State return. An additional net capital loss was also incurred in 1989. Since the individual's 1989 Federal taxable income would include a three thousand dollar (\$3,000) loss carry-over the individual must add back three thousand dollars (\$3,000) to Federal taxable income on the 1989 State return. The remaining five hundred dollars (\$500.00) would be added back to the individual's Federal taxable income for 1990.]

EXAMPLE: Prior State law required charitable contributions to be deducted in the year they were paid and did not permit any amount to be carried over to another tax year. Under Federal law, an individual who may not be entitled to deduct the full amount of certain contributions because of an adjusted gross income limitation may carry over the unused portion to the succeeding tax year. In this situation, the individual must add back to Federal taxable income the contributions carry-over from 1988 if he itemized deductions on his Federal income tax return.

EXAMPLE: Generally, for Federal income tax purposes for tax years beginning on or after January 1, 1987, to the extent that the total deductions from passive activities exceed the total income from such activities for the tax year, the excess (passive activity loss) is not allowed as a deduction for that year. A disallowed passive loss is allowed to be carried forward as a deduction from passive activity income in the next succeeding tax year. Generally, losses from passive activities may not be deducted from other types of income (e.g., wages, interest, or dividends). A passive activity is one that involves the conduct of any trade or business in which the taxpayer does not materially participate. Any rental activity is a passive activity regardless of whether the taxpayer materially participates. Special rules apply to rental activities. Under State law, a passive loss carried forward

from a tax year beginning prior to January 1, 1989, must be added back to Federal taxable income since the entire loss was deductible on the taxpayer's return for the year the loss was incurred.

- (4) Amounts deducted on an individual's Federal income tax return as net operating losses brought forward from tax years beginning prior to January 1, 1989, must be added to Federal taxable income. For tax years prior to January 1, 1989, State law allowed a net economic loss to be carried forward to subsequent years but was computed differently from the Federal net operating loss. Prior State law did not permit the loss to be carried back to prior tax years as did Federal law.

EXAMPLE: An individual sustains a business loss of one hundred thousand dollars (\$100,000) in 1988, had no other business income or business expenses for that year, and received interest income of eighty-two thousand dollars (\$82,000) from City of Raleigh bonds during the taxable year. For Federal income tax purposes, the individual would have sustained a net operating loss of one hundred thousand dollars (\$100,000). If the individual had no income in the prior three tax years to offset the net operating loss, he could carry the one hundred thousand dollar (\$100,000) loss forward for up to 15 years and deduct it as a net operating loss on his subsequent Federal income tax returns. Under prior State law, the individual would have incurred a net economic loss of eighteen thousand dollars (\$18,000) [business loss of one hundred thousand dollars (\$100,000) less nontaxable income of eighty-two thousand dollars (\$82,000)] that could be carried forward up to five years after reducing it by both taxable and nontaxable income. In this situation, the individual must add back the net operating loss deduction to his Federal taxable income.

- (5) If an individual recovered all or any portion of his contributions to an annuity for State income tax purposes for taxable years beginning prior to January 1, 1989, but such amount was not recovered for federal income tax purposes, he must include a ratable portion of the difference in the cost previously recovered for North Carolina purposes and the amount previously recovered for Federal purposes on the North Carolina return for each year beginning on or after January 1, 1989. EXAMPLE: Both the employee and the employer contributed to the cost of the employee's annuity and the employee will recover his contribution within three years from the annuity starting date. For tax years beginning prior to January 1, 1989, the employee was entitled under State law to recover his contributions to the annuity in full before being taxed on the benefits. The ratable portion to be added to Federal taxable income is determined as follows:

$$\frac{\text{Amount recovered on State return} - \text{Amount recovered on Federal return}}{\text{Remaining Years Life Expectancy}} = \text{Addition to Taxable Income}$$

If the cost recovered for federal income tax purposes for taxable years beginning prior to January 1, 1989, is greater than the cost recovered for State income tax purposes for years prior to 1989, the ratable portion to be deducted from federal taxable income is determined as follows:

$$\frac{\text{Amount recovered on Federal return} - \text{Amount recovered on State return}}{\text{Remaining Years Life Expectancy}} = \text{Deduction from Taxable Income}$$

The amount of difference in the numerator of the fractions in this Subparagraph should reflect the cost recovered during the taxpayer's period of residence in North Carolina and exclude any cost recovered during residence in another state. In the denominator, the remaining years life expectancy to be entered is the life expectancy determined for federal income tax purposes for the year the annuity started less the number of tax years the annuity was reportable for federal tax purposes prior to January 1, 1989. The amount of the transitional adjustment computed for the tax year 1989 will remain the same for each year of the individual's remaining life expectancy.

This transitional adjustment will not apply to retirement annuities from any federal retirement program which were taxed unconstitutionally prior to January 1, 1989, and to annuities which were exempt under prior State law, including retirement annuities from the North Carolina Teachers' and State Employees' Retirement System and the North Carolina Local Governmental Employees' Retirement System. Also, this transitional adjustment will not apply to retirement annuities received by former teachers and state employees of other states which were fully exempt from North Carolina income tax prior to January 1, 1989, because the other state had no income tax law or practiced reciprocity with North Carolina with respect to taxing such benefits.

This transitional adjustment will apply to retirement annuities received by former teachers and state employees of other states which were not fully exempt because those states practiced no reciprocity or only partial reciprocity with North Carolina with respect to such benefits for taxable years beginning prior to January 1, 1989. The amount of cost recovered on the North Carolina return prior to January 1, 1989, to be used in the formula for computing the addition to federal taxable income is to be computed without considering any benefits which were excluded as the result of partial reciprocity.

- (6) Net economic losses sustained in the five taxable years preceding an individual's first taxable year beginning on or after January 1, 1989, may be carried forward and deducted from taxable income as under prior law. Under prior law, a net economic loss could be carried forward for up to five years. The law defines a net economic loss as the amount by which allowable deductions for the year other than personal exemptions, nonbusiness deductions and prior-year losses exceed income from all sources in the year, including any nontaxable income.
- (7) A Federal net operating loss for a taxable year beginning on or after January 1, 1989, carried back for Federal income tax purposes to a taxable year beginning before January 1, 1989, may be deducted from Federal taxable income in the taxable year following the taxable year in which the loss occurred.
- (8) Adjustments must also be made in the taxable income of a shareholder of an S corporation. (See 17 NCAC 6B .4000)
- (9) When a parent elects to report his child's unearned income, the child is treated as having no gross income for the year and is not required to file a Federal income tax return. A parent electing to report a child's unearned income for Federal tax purposes must add back to his Federal taxable income the amount of the child's unearned income in excess of five hundred dollars (\$500.00) but not exceeding one thousand dollars (\$1,000).

Other additions and deductions to Federal taxable income may be required to ensure that the transition to the new tax law does not result in the double taxation of income, the exemption of otherwise taxable income or double allowance of deductions.

*History Note: Statutory Authority G.S. 105-134.7; 105-262;
Eff. June 1, 1990;
Amended Eff. February 1, 1991.*

SECTION .0600 - TAX CREDITS

.0610 CREDIT FOR THE DISABLED

(a) A tax credit equal to one-third of the amount of the Federal tax credit allowed under the Internal Revenue Code is allowed to an individual who is permanently and totally disabled. Although the Federal tax credit is allowed for being 65 or older, no portion of the tax credit is allowed on the North Carolina return for being 65 or older.

(b) A tax credit is also allowed to a taxpayer who is allowed an exemption under the Internal Revenue code for a totally and permanently disabled dependent or spouse. To claim the credit, a statement from a physician or local health department must be attached to the return certifying that the dependent was unable to engage in any substantial gainful activity by reason of a physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. The allowable credit is determined by completing the "Worksheet for Determining Tax Credit for Disabled Taxpayer, Dependent, and/or Spouse" in the income tax instruction booklet.

(c) A taxpayer who claims the tax credit for being permanently and totally disabled may also be eligible to claim the tax credit for a permanently and totally disabled dependent or spouse for whom the taxpayer claimed an exemption under the Internal Revenue Code.

(d) A nonresident or part-year resident is allowed the tax credit for a disabled taxpayer and the tax credit for a disabled dependent or spouse in the proportion that the Federal taxable income (as adjusted) is taxable to North Carolina.

*History Note: Statutory Authority G.S. 105-151.18; 105-262;
Eff. February 1, 1991.*

.0611 CREDIT FOR TAX PAID ON CERTAIN GOVERNMENT RETIREMENT BENEFITS

(a) A tax credit is allowed equal to the amount of unrefunded income tax paid for the tax year 1988 on retirement benefits received from one or more state, local, or Federal government retirement plans. The credit is for the amount by which the income tax liability for 1988 would have been reduced if none of the government retirement benefits had been included in taxable income.

(b) The tax credit must be taken in equal installments over the first three tax years beginning on or after January 1, 1990. An installment of the tax credit allowed in one taxable year may not be carried over to another taxable year.

(c) The tax credit applies not only to tax paid to North Carolina on North Carolina and Federal government retirement benefits, including qualified deferred compensation plan benefits, but also applies to the 1988 North Carolina tax paid on such benefits received from the retirement plans of other states and local governments of other states. The tax credit is not allowed with respect to retirement benefits from private retirement or Individual Retirement Accounts (IRAs).

*History Note: Statutory Authority G.S. 105-151.20; 105-262;
Eff. February 1, 1991.*

SECTION .3200 - PENALTIES: INDIVIDUAL INCOME TAX

.3203 PENALTIES FOR FAILURE TO FILE AND PAY

(a) Under the provisions of G.S. 105-236 both the failure to file and failure to pay penalties, if due, can be applied for the same month. If a return is filed late without payment of the tax shown due, both the late filing and late payment penalties will be assessed at the same time as shown in the table in this Rule:

Cause	Penalty
(1) Return filed by due date showing tax due of \$1.00 or more--No tax paid by due date	10% failure to pay (minimum \$5.00).
(2) Return filed late showing tax due of \$1.00 or more--No tax paid with return	5% per month failure to file (\$5.00 min. --25% max.) and 10% failure to pay--\$5.00 min.).
(3) Return filed late showing tax due of \$1.00 or more--Tax paid with return	5% per month failure to file (\$5.00 min. --25% max.) and 10% failure to pay (\$5.00 min.).
(4) Return filed late showing no tax due or tax due of less than \$1.00--Tax due after examination	*5% per month failure to file (\$5.00 min. --25% max.).
(5) Return filed by due date showing no tax due or tax due of less than \$1.00--Tax due after examination	*No penalty at time of examination.
(6) Return filed late showing tax due of \$1.00 or more--Tax and failure to file penalty paid with return--More tax due after examination	*Failure to file penalty on additional tax on same basis as was assessed on original return. 10% failure to pay on the tax shown due on the return--(\$5.00 min.)
(7) Return filed by due date showing tax due of \$1.00 or more--Tax paid with return--More tax due after examination	*No penalty at time of examination.
(8) Return filed late showing refund--Refund is made--Tax due after examination	*5% per month failure to file (\$5.00 min. --25% max.) on additional tax.
(9) Return filed late showing refund--Refund is not made--Tax due after examination	*5% per month failure to file (\$5.00 min. --25% max.) on additional tax.
(10) Return filed by due date showing refund	

- | | |
|---|--|
| --Refund is made--Tax due after examination..... | *No penalty at time of examination. |
| (11) Amended return filed showing tax due of
\$1.00 or more--no tax paid with return. | 10% failure to pay (\$5.00 min.). |
| (12) Amended return filed showing tax due of
\$1.00 or more--part of tax paid with return..... | 10% failure to pay on balance of tax due
(\$5.00 min.). |

*A negligence or fraud penalty may also be assessed.

(b) If the return is filed under an extension, the failure to file and failure to pay penalties will be assessed from the extended filing date rather than from the original due date. The failure to pay penalty is 10 percent of the tax not paid by the due date of the return. The penalty will apply on any remaining balance due if the tax paid by the due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due, including interest, must be paid with the income tax return on or before the expiration of the extension period to avoid the late payment penalty. Interest is due from the original due date to the date paid.

(c) Paragraph (b) of this Rule applies to taxable years beginning on or after January 1, 1990.

*History Note: Statutory Authority G.S. 105-152(e); 105-155; 105-157; 105-160.6; 105-160.7; 105-236; 105-263;
Eff. April 1, 1978;
Amended Eff. February 1, 1991; June 1, 1990.*

SECTION .3400 - STATUTE OF LIMITATIONS AND FEDERAL CHANGES

.3402 LIMITATIONS FOR ASSESSMENTS

(a) An assessment for tax or additional tax due may be made within three years after the date a return is actually filed or within three years from the date required by law for filing the return, whichever is later.

A tentative return from which material particulars are missing is not a return for the purpose of determining when the statute of limitations will run. The date the final return is filed is the determining date.

There is no statutory provisions prohibiting the making of an assessment for a given year after an assessment has already been made for that year. When new facts are revealed which are of sufficient importance to justify a second assessment, it will be made. A second assessment will be made in every case where notification of a federal change reveals an adjustment of a sufficient amount to justify an assessment.

(b) If a return for any income year beginning on or after January 1, 1969 has not been filed by a taxpayer, any tax or additional tax due from the taxpayer for such year may be assessed at any time.

(c) When fraud is involved, there is no statute of limitations for an assessment for tax or additional tax. This is the case regardless of whether or not a return has been filed by the individual.

*History Note: Statutory Authority G.S. 105-241.1(e); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1991.*

.3403 FEDERAL CHANGES

(a) If the amount of net income reported or reportable by any taxpayer for any year is changed, corrected, or otherwise determined by the U.S. Government, the taxpayer must make a return to the state showing that change or determination of net income within two years after receipt of the Internal Revenue Agent's Report.

(b) If an individual makes a return reflecting the corrected or determined net income, an assessment may be made within three years from the date this return is actually filed. If the individual does not make the return to the state reflecting the federal changes or determination of net income within two years after receipt of the Internal Revenue Agent's Report, and a report is received from the U.S. Government reflecting the corrected net income, an assessment may be made within five years from the date of receipt by the Department of Revenue of the report from the U.S. Government. The individual forfeits his right to any refund which might be due by reason of the changes, provided the statute of limitations has otherwise expired.

Even though an individual is allowed a two year period following receipt by him of the Internal Revenue Agent's Report to report the federal changes, an assessment can be made by the department

immediately following receipt from any source of information concerning the correction, change in, or determination of the net income of the taxpayer by the U.S. Government.

If no return reflecting the changes made is received from the individual and no report is received from the United States Government, no statute of limitations applies, and an assessment for income tax may be made at any time based on the information acquired.

(c) When an Internal Revenue Agent's Report is received reflecting changes made in the net taxable income of an individual, the department may assess tax or additional tax based on applicable federal changes and may also make any other changes based on any facts or evidence discovered from any other source. This is the case regardless of whether or not a previous assessment has been made for the same taxable year.

*History Note: Statutory Authority G.S. 105-159; 105-163.16; 105-241.1; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1991.*

SECTION .3500 - PARTNERSHIPS

.3513 NONRESIDENT PARTNERS

(a) When an established business in North Carolina is owned by a partnership having one or more nonresident members, the managing partner is responsible for reporting the distribution share of the income of each nonresident partner and is required to compute and pay the tax due for each nonresident partner. The tax rate is six percent of the nonresident partner's share of income up to twelve thousand seven hundred fifty dollars (\$12,750), plus seven percent of the income over twelve thousand seven hundred fifty dollars (\$12,750). The manager is authorized by statute to withhold the tax due from each nonresident partner's share of the partnership net income. Payment of the tax on behalf of nonresident corporate partners does not relieve the corporation from filing corporate income tax and franchise tax returns; however, credit for the tax paid by the managing partner may be claimed on the corporate returns. Although a partnership may treat guaranteed payments to a partner for services or for use of capital as if they were paid to a person who is not a partner, such treatment is only for purposes of determining its gross income and deductible business expenses. For other tax purposes, such guaranteed payments are treated as a partner's distributive share of ordinary income. In determining the allowable North Carolina deductions from Federal taxable income, do not include a partner's salary, interest on a partner's capital account, partner relocation and mortgage interest differential payments, or payments to a retired partner regardless of whether they were determined without regard to current profits. These types of payments are treated as part of the partner's share of the partnership income. A nonresident partner is not required to file a North Carolina individual income tax return when the only income from North Carolina sources is the nonresident's share of income from a partnership doing business in North Carolina and the manager of the partnership has reported the income of the nonresident partners and paid the tax due. A nonresident partner may file an individual income tax return and claim credit for the tax paid by the manager of the partnership if the payment is properly identified on the individual income tax return.

(b) If a partnership has one or more nonresident partners and is operating in one or more states other than North Carolina, the partnership's net income attributable to North Carolina for the purpose of determining the North Carolina income tax liability of a nonresident partner must be determined by multiplying the total net income of the partnership by the apportionment percentage computed in Schedule B of Form D-403. This means that in the allocation of net income of a nonresident partner to North Carolina the applicable allocation formula prescribed for corporations is used. This allocation of income does not affect the reporting of partnership income by the resident partner because he is taxable on his share of the net income of the partnership whether or not any portion of it is attributable to another state or country.

*History Note: Statutory Authority G.S. 105-134.5(d); 105-154; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1991; December 1, 1990; June 1, 1990; April 12, 1981.*

SECTION .3800 - MISCELLANEOUS RULES

.3804 MISCELLANEOUS RULES

(a) When a payment is received by the Department of Revenue for less than the correct tax, penalty, and interest due under the law and the facts, and the payment includes the statement, "paid in full" or other similar statements, the payment will be deposited as required by G.S. 144-77. The endorsement and deposit of the payment with such statement will not make the statement binding on the Department of Revenue and will not prevent the collection of the correct balance due.

(b) The Department of Revenue is authorized by law to photograph, photocopy, or microphotocopy all records of the Department, including tax returns, and such copies, when certified by the Department as true and correct copies, shall be admissible in evidence as the original would have been. (G.S. 8-45.3)

(c) In some cases debts owed to certain State and county agencies will be collected from an individual's income tax refund. If the agency files a claim with the Department for a debt of at least fifty dollars (\$50.00) and the refund is at least fifty dollars (\$50.00), the debt will be set off and paid from the refund. The Department will notify the debtor after the set-off has been finalized and will refund any balance which may be due. The debtor will be notified and given an opportunity to contest the debt to the agency making the claim before the set-off is completed.

(d) An individual may elect to contribute all or any portion of his income tax refund, at least one dollar (\$1.00) or more, to the North Carolina Nongame and Endangered Wildlife Fund. Once the election is made to contribute, the election cannot be revoked after the return has been filed. The contribution will be used to assist in the management and protection of North Carolina's many nongame species, including endangered wildlife. The Nongame and Endangered Wildlife Fund will be the primary source of money to support much needed research, public education, and management programs designated specifically to benefit nongame wildlife.

(e) When an individual checks "Yes" to the question, "Do you want \$1.00 to go to this fund (North Carolina Political Parties Financing Fund)?" on his tax return, the total funds designated will be distributed to political parties in North Carolina on a pro rata basis according to voter registrations. Checking "Yes" will neither increase his tax nor reduce his refund.

(f) Tenancy by the Entirety: When filing separate returns a determination must be made as to that portion of the income or loss from real property that must be reported by each spouse. Under G.S. 39-13.6, a husband and wife have equal right to the control, use, possession, rents, income, and profit from real property held as tenants by the entirety and each spouse is taxed on one-half of the income or loss from such property located in North Carolina. When real property conveyed jointly in the name of husband and wife is located in another state and the share of ownership of each is not fixed in the deed or other instrument creating the co-tenancy, each spouse is considered as having received one-half of the income or loss from the real property unless they can demonstrate that the laws of that particular state with respect to the right to the income from the property allocate the income or losses in a different manner.

(g) Cancelled checks, receipts, or other evidence to substantiate deductions on the tax return should be kept for a period of at least three years from the due date of the return or three years from the date the return is filed, whichever is later. Lack of adequate records could result in the disallowance of all or part of the deductions claimed. A cancelled check, money order stub, or Departmental receipt showing payment of tax should be kept for at least five years from the due date of the tax return.

(h) An individual may elect to contribute all or any portion of his income tax refund (at least one dollar (\$1.00) or more) to the North Carolina Candidates Financing Fund. Once the election is made to contribute, the election cannot be revoked after the return has been filed. The Candidates Financing Fund was created to induce candidates for governor and council of state offices to limit their campaign spending, and contributions made from refunds will be placed in the Fund.

(i) In determining North Carolina taxable income, G.S. 105-134.6(b) allows an individual to deduct from his federal taxable income interest received from obligations of the United States or its possessions, the State of North Carolina or its political subdivisions, and nonprofit educational institutions located in North Carolina, to the extent the interest is included in his federal gross income. Under this statute, an individual is allowed to deduct the total of such interest included in his federal gross income even though certain expenses incurred in earning the interest are allowed as deductions on his federal income tax return.

G.S. 105-134.6(c) requires an individual to add interest received from obligations of states other than North Carolina and their political subdivisions to federal taxable income in calculating his North Carolina taxable income, to the extent the interest is not included in his federal gross income. Under this statute, an individual is required to add the total of such interest to federal taxable income even though he may have incurred expenses in earning the interest.

Similar adjustments may be required by a partner or beneficiary. Although the interest passed to a partner in a partnership or to a beneficiary of an estate or trust retains its same character as when received by the partnership or the estate or trust, the expenses incurred in earning such income are deductible by the partnership or the estate or trust, and the net interest income after deducting the expenses is reflected in the partner's or beneficiary's pro rata share of the net income of the partnership or fiduciary. Therefore, in the case of interest income subject to federal income tax, the partner's or beneficiary's federal gross income reflects the net interest income after allowing the expenses incurred in earning the income. Interest income not subject to federal income tax is not reflected in the partner's or beneficiary's federal taxable income. This being the case, a partner or beneficiary must adjust his federal taxable income in determining his North Carolina taxable income as required by G.S. 105-134.6(b) and G.S. 105-134.6(c), as an addition or deduction for the net amount of interest from the above sources attributable to a partnership or an estate or trust.

*History Note: Statutory Authority G.S. 105-134.6(b); 105-134.6(c); 105-262;
Eff. June 1, 1990;
Amended Eff. February 1, 1991.*

SECTION .3900 - NONRESIDENTS AND PART-YEAR RESIDENTS

.3904 TAXABLE INCOME OF NONRESIDENTS AND PART-YEAR RESIDENTS

(a) Nonresidents and part-year residents are required to prorate their Federal taxable income to determine the portion that is subject to North Carolina tax.

(b) The taxable income of a nonresident subject to North Carolina income tax is determined by multiplying the Federal taxable income, less any applicable adjustments, by the percentage obtained when dividing the portion of total Federal income, as adjusted, derived from North Carolina sources by the total income from the applicable line of the Federal return, as adjusted.

(c) For part-year residents who are subject to North Carolina tax, taxable income is determined by multiplying the total Federal income as calculated under the Internal Revenue Code, less any applicable adjustments, by the percentage obtained when dividing the portion of total Federal income received from all sources during the period the individual was a resident of North Carolina, plus any income received from North Carolina sources while a nonresident, as adjusted, by the total Federal income, as adjusted.

(d) If an individual files a joint Federal income tax return with his spouse but cannot qualify to file a joint North Carolina income tax return because his spouse is a nonresident and had no North Carolina taxable income, he must calculate his Federal taxable income on a Federal income tax form as a married person filing a separate Federal income tax return and attach it to his North Carolina return to show how his separate Federal taxable income was determined. The individual filing the separate Federal return should report only his income, exemptions, and deductions. In lieu of making the calculation on a federal form, an individual may submit a schedule showing the computation of his separate federal taxable income provided he submits a copy of his federal joint income return with his North Carolina return.

(e) If an individual has income from sources within another state or country while a resident of North Carolina and the other state or country taxes the individual on such income, he may be eligible to claim a tax credit on the North Carolina income tax return.

(f) A nonresident is not entitled to the tax credits for tax paid another state or country or for child and dependent care expenses.

*History Note: Statutory Authority G.S. 105-134.5; 105-262;
Eff. June 1, 1990;
Amended Eff. February 1, 1991.*

SECTION .4000 - S CORPORATION

.4006 DISTRIBUTIONS

(a) A resident shareholder must take into account distributions from an S corporation in computing North Carolina taxable income to the extent the distributions are characterized as dividends or as gains pursuant to Section 1368 of the Internal Revenue Code. Section 1368 of the Code provides that if the S corporation has no accumulated earnings and profits, the amount distributed to a shareholder reduces

the adjusted basis in his stock. If the S corporation has earnings and profits, the distribution is applied in the following order:

- (1) To the Accumulated Adjustments Account (AAA), which basically includes the income during the period the corporation has been an S corporation reduced by its losses and distributions during that period. The AAA for State income tax purposes does not include the Federal AAA for tax years beginning prior to January 1, 1989. The shareholder does not take into account distributions from the AAA in determining taxable income but such distributions reduce the adjusted basis of his stock.
- (2) To Earnings and Profits (E and P): An S corporation is not considered to have earnings and profits for State tax purposes for years in which it operates as an S corporation after January 1, 1989. The E and P account basically includes the earnings and profits on hand from the period the corporation was a C corporation; and for State tax purposes, the E and P account also includes the undistributed earnings and profits of the S corporation from tax years beginning before January 1, 1989, (the Federal AAA that existed on the day North Carolina began to measure the S corporation shareholder's income by reference to the income of the S corporation). The amount distributed to the shareholder from the E and P account is taxed to the shareholder as a dividend. Since the State E and P account includes the Federal AAA that existed prior to the change in State law taxing the S corporation income to the shareholders, a transitional adjustment must be made to increase State taxable income for any distributions from the Federal AAA that existed prior to the law change.
- (3) To the basis of the shareholder's stock: Any excess over the shareholder's basis is taxed as a capital gain.

(b) If an S corporation has accumulated earnings and profits, the shareholders may make an election for Federal tax purposes to treat distributions from the S corporation as being paid first from earnings and profits provided all shareholders consent to the election in the year of the distribution. There is no provision in North Carolina law to allow the shareholders to make a different election than the one made for Federal tax purposes.

(c) Shareholders in S Corporations who received distributions during the corporation's 1988 fiscal year or before October 1, 1989, may amend their 1989 individual income tax return and claim the six percent dividend tax credit without regard to the three hundred dollar (\$300.00) limitation otherwise applicable to the dividend tax credit. No additional tax credit is allowed for dividends distributed on or after October 1, 1989, from an S Corporation during its 1989 taxable year if the taxpayer's total dividend credit, otherwise allowable for the taxable year, exceeds the maximum credit of three hundred dollars (\$300.00). This provision is effective retroactively for taxable years beginning on or after January 1, 1989.

*History Note: Statutory Authority G.S. 105-131.6; 105-151.19; 105-262;
S.L. 1989 (Regular Session 1990), c. 984, s.3;
Eff. June 1, 1990;
Amended Eff. February 1, 1991.*

.4008 LOSSES

(a) The amount of loss a shareholder may deduct is limited to the adjusted basis of the shareholder's stock, plus the adjusted basis of any loans owed to the shareholder by the corporation. The amount of the loss for the taxable period is figured before the shareholder's basis in the stock is adjusted for any distributions during the tax year. If the amount of the loss of a shareholder is limited because it exceeds the adjusted basis, the excess is treated as incurred by the corporation in the next tax year.

(b) An S Corporation is allowed to carry forward and deduct a net economic loss sustained in a taxable year beginning before January 1, 1989, to any taxable year beginning on or after January 1, 1989, and before July 1, 1991, to one-half the extent the S Corporation would have been allowed to carry forward the loss if the S Corporation Income Tax Act had not become effective until taxable years beginning on or after July 1, 1991. A loss carryforward deduction in each year may not exceed one-half of the S Corporation's net income as adjusted. Each shareholder is allowed to deduct his pro rata share of the S Corporation's net economic loss carryforward as a transitional adjustment in arriving at his North Carolina taxable income. The shareholder's basis in the S Corporation stock and the accumulated adjustments account maintained for the shareholder are required to be reduced for the amount of the deduction. This provision is effective retroactively for taxable years beginning on or after January 1, 1989, and shall expire for taxable years beginning on or after July 1, 1991.

*History Note: Statutory Authority G.S. 105-131.3; 105-131.4; 105-262;
Eff. February 1, 1991.*

SUBCHAPTER 6C - WITHHOLDING

SECTION .0200 - FILING WITHHOLDING REPORTS

.0202 QUARTERLY AND MONTHLY

Withheld taxes are paid quarterly, monthly, or within three banking days. Employers who withhold an average of less than five hundred dollars (\$500.00) from wages each month must file a return and pay the withheld taxes on a quarterly basis. Employers who withhold an average of at least five hundred dollars (\$500.00) but less than two thousand dollars (\$2,000.00) from wages each month must file a return and pay the withheld taxes on a monthly basis. Employers who withhold an average of at least two thousand dollars (\$2,000.00) from wages each month must file a return and pay the withheld taxes at the same times they are required to file returns and pay the tax withheld on the same wages for Federal income tax purposes.

EXCEPTION: For Federal tax purposes, if an employer withholds one hundred thousand dollars (\$100,000.00) or more, the deposit is required on the next banking day. North Carolina law does not adopt this provision of Federal law, and the State income tax withholding on the same wages is due on or before the third banking day after the end of that eighth-monthly period.

*History Note: Statutory Authority G.S. 105-163.6; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1991; February 1, 1988; February 21, 1979.*

.0203 ANNUAL REPORTS

(a) At the end of each calendar year employers are required to furnish wage and tax statements, Form NC-2, to employees. Two copies must be furnished to the employee and one copy must be furnished to the Department. The Internal Revenue Service supplies a six part Form W-2 which will produce the required federal and North Carolina statements in one packet.

(b) The copies of the wage and tax statements for the Department of Revenue must be filed with the Annual Reconciliation of North Carolina Income Tax Withheld, Form NC-3, NC-3M, or NC-3A.

(c) Reports of payments of income, interest, rents, premiums, dividends, annuities, remunerations, emoluments, fees, gains, profits, taxable meal reimbursements, and other determinable annual or periodic gains during a calendar year must be made on Information at the Source Reports, Form NC-1099, if the payments have not otherwise been reported.

*History Note: Statutory Authority G.S. 105-154; 105-163.7; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1991; June 1, 1990; April 12, 1981.*

.0204 AMOUNTS WITHHELD ARE HELD IN TRUST FOR/SECRETARY OF REVENUE

(a) A penalty of 25 percent of the amount due is imposed for failure to withhold, to file a report on time, or to pay the tax when due.

(b) An employer who fails to withhold or pay the amount required to be withheld is personally and individually liable for the tax. If an employer has failed to withhold or to pay over income tax withheld or required to have been withheld, the unpaid tax may be asserted against the responsible corporate officers or other responsible person whenever such taxes cannot be immediately collected from the employer. More than one person may be liable as a person responsible for the payment of withholding taxes; however, the amount of the income tax withheld or required to have been withheld will be collected only once, whether from the employer or one or more responsible persons. The term "responsible person" includes any person who is in a position to control the finances of the employer or has the authority or ability to determine which obligations should or should not be paid. Responsibility is a matter of status, duty, and authority, not knowledge. It is not necessary that the failure to collect and pay the withholding amounts was willful; it is only necessary that the responsible person failed to pay the tax withheld or required to have been withheld to the Secretary of Revenue regardless of his reasons or the knowledge he had of such failure.

(c) When the Department of Revenue determines that collection of the tax is in jeopardy, an employer may be required to report and pay the tax at any time after payment of the wages.

*History Note: Statutory Authority G.S. 105-163.8; 105-163.17; 105-163.18; 105-241.1(g); 105-262;
Eff. June 1, 1990;
Amended Eff. February 1, 1991.*

**TITLE 19A
DEPARTMENT OF TRANSPORTATION**

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

**SUBCHAPTER 3J - RULES AND REGULATIONS GOVERNING THE LICENSING OF
COMMERCIAL TRUCK DRIVER TRAINING SCHOOLS AND INSTRUCTIONS**

SECTION .0100 - COMMERCIAL TRUCK DRIVER TRAINING SCHOOLS

.0102 DEFINITIONS

For the purpose of this Rule, the following definitions shall apply:

- (1) "Actively Enrolled" means any student who is neither a graduate nor has failed to complete his or her course.
- (2) "Base Period" means a six-month period from January 1 through June 30 or from July 1 through December 31.
- (3) "Commercial Truck Driver Training School" means any enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either in class or behind the wheel, or both, to operate or drive a truck-tractor-trailer combination unit, and charging a consideration or tuition for such services.
- (4) "Constructive Notice" means a student's notice of intention to withdraw from a course by failing to attend residence instructional facilities for a period of three consecutive days on which that class meets.
- (5) "Cooling off Period" means five days from the time the student is given or mailed a signed copy of his completed contract.
- (6) "Enrollment contract" means any agreement or instrument, however named, which creates or evidences an obligation binding a student to purchase a course from a school.
- (7) "Fail to Complete" means any student who does not fully complete the required 160 hours of the lessons or classes required by the Division as constituting the full course of study and who cancels by any of the methods prescribed, shall be deemed to have "failed to complete" his or her course.
- (8) "Field Training" means off-road training in and around the truck. Refer to Rule .0306(2)(b), (c), (e), and (i) of Section .0300.
- (9) "Foreign Commercial Truck Driver Training School" means an enterprise located outside North Carolina which solicits, advertises, or offers truck driver training to residents of North Carolina.
- (10) "General Job or Earnings Claim" means any express claim or representation concerning the general conditions or employment demand in any employment market now or at any time in the future or the amount of salary or earnings generally available to persons employed in any occupation.
- (11) "Graduate" means any student who fully completes the required 160 hours of the lessons or classes required by the Division and discharges any other requirements or obligations established by the school as prerequisites for completing the full course of study.
- (12) "Job or Earnings Claim" means any general or specific job or earnings claim.
- (13) "Media Advertisement" means any advertisement disseminated to the public by means of print or broadcast media, including newspapers, magazines, radio, television, posters, or any other means. It does not include promotional materials that are available from a school or distributed by its sales representatives.
- (14) "Most Recent Base Period" means the latest base period.
- (15) "New Course" means any course which has a substantially different course content and occupational objective from any course previously offered by the school and which has been offered for a period of time less than six months.
- (16) "Prospective Student" means any person who seeks to enroll in a course.

- (17) "Recruiter/Salesman" means any person who is employed by a commercial truck driver training school, directly or indirectly, to recruit students for a school. This definition includes persons who are employed by another person who is a direct employee or broker for a school.
- (18) "Seminar" means a course of 40 hours or less offering educational materials and classroom instruction only in order to prepare a student for an examination given by the State for a driver's license.
- (19) "Specific Job or Earnings Claim" means any express claim or representation concerning the employment opportunities available to students or the demand for students who purchase the school's course, or the amount of salary or earnings available to students who purchase the school's course.
- (20) "Student" means any person who has signed an enrollment contract with a school and not cancelled that contract before the cooling-off-period, specified in this Rule, has ended.
- (21) "Total Contract Price" means the total price for the enrollment contract, including charges for registration, ancillary services, and any finance charges.

*History Note: Statutory Authority G.S. 20-320 through 20-328;
Eff. May 1, 1987;
Amended Eff. February 1, 1991.*

SECTION .0200 - REQUIREMENTS AND APPLICATIONS FOR COMMERCIAL TRUCK DRIVER TRAINING SCHOOLS

.0201 REQUIREMENTS

The Division shall not issue a commercial truck driver training school license to any individual, partnership, group, association, or corporation unless:

- (1) the individual, partnership, group, association, or corporation has at least one motor vehicle registered or leased in the name of the school, which vehicle has been inspected by a representative of the Division and vehicle insurance certified as required by these Regulations for use by the school for driver training purposes and driver instruction.
- (2) The individual, partnership, group, association, or corporation has at least one person licensed by the Division as a commercial truck driver training instructor for that school.
- (3) Each manager or owner-operator of a commercial truck driver training school or branch shall:
 - (a) be of good moral character;
 - (b) be at least 18 years of age;
 - (c) not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the 10 years immediately preceding the date of application; and
 - (d) not have had a revocation or suspension of his operator's or chauffeur's license in the two years immediately preceding the date of application.
- (4) In the case of a foreign commercial truck driver training school, recruiting in North Carolina, the following items are necessary:
 - (a) a copy of the school's license;
 - (b) a course description, including topics taught and the length of the course;
 - (c) a list of equipment available for training;
 - (d) a copy of the contract complete with the fee charged;
 - (e) the names of the persons who represent the school in North Carolina; and
 - (f) a surety bond in the amount of thirty thousand dollars (\$30,000) for schools offering courses of instruction of 160 hours or more whether in-state or foreign and ten thousand dollars (\$10,000) for schools offering seminar training only.

Provided, Subparagraph (1) and (4)(c) of this Rule shall not apply to schools offering seminar training only.

*History Note: Statutory Authority G.S. 20-320 through 20-328;
Eff. May 1, 1987;
Amended Eff. February 1, 1991.*

.0204 DUPLICATE COPIES

All applications, either original or renewal, for a commercial truck driver training school or branch shall be completed in duplicate. The original copy of each form shall be submitted to the Enforcement

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Section of the Division of Motor Vehicles at the following address: 1100 New Bern Avenue, Raleigh, North Carolina 27697-0001. A copy of each form shall be filed at the place of business.

*History Note: Statutory Authority G.S. 20-320 through 20-328;
Eff. May 1, 1987;
Amended Eff. February 1, 1991.*

SECTION .0300 - SCHOOL LOCATION: PHYSICAL FACILITIES: AND COURSES OF INSTRUCTION

.0303 CLASSROOM FACILITY

The classroom facility shall meet the following minimum requirements:

- (1) A minimum overall size of not less than 120 square feet (which includes at least 70 square feet for the instructor and his equipment and at least 12 square feet for each student).
- (2) Lighting, heating, and ventilation systems that are in compliance with all state and local laws and ordinances including, but not limited to, zoning, public health, safety, and sanitation.
- (3) Seats and writing surfaces for all students; blackboards visible from all seats; charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; a copy of the Driver's Handbook published by the Division for each student; and other textbooks deemed necessary by the instructor.
- (4) Restroom facilities sufficient for the class size must be provided.
- (5) Covered shelter must be provided for students when on the field range to protect them from the weather when not driving.
- (6) Seminar only courses must provide seats and writing surfaces for all students and printed instructional materials deemed necessary by the instructor. Seminars may be conducted at any location meeting the requirements in this Paragraph provided prior notice is given to and approval is given by the Enforcement Section.

*History Note: Statutory Authority G.S. 20-320 through 20-328;
Eff. May 1, 1987;
Amended Eff. February 1, 1991.*

.0308 REPORTS TO BE SUBMITTED

(a) Every commercial truck driver training school offering a full program shall submit to the Division the following reports:

- (1) A schedule of classes for each licensing period.
- (2) A class roster as of the first day of class, which roster shall include the name, address, telephone number, and driver's license number of each student.
- (3) A copy of each student's contract(s).
- (4) A list of salesmen/recruiters working for the school (directly or indirectly) at the beginning of the licensing period, with additions or deletions to be filed within 30 days of such change.
- (5) All other reports as required by Article 14, Chapter 20 of the General Statutes.

(b) Every commercial truck driver training school offering seminars only shall submit and obtain approval of a course plan at least 30 days prior to the class. It shall also submit items in Subparagraphs (a)(1) and (a)(5) of this Rule.

*History Note: Statutory Authority G.S. 20-320 through 20-328;
Eff. May 1, 1987;
Amended Eff. February 1, 1991.*

SECTION .0600 - CONTRACTS

.0601 REQUIREMENTS

Commercial truck driver training school contracts are required if course of instruction contracted for is 160 hours or longer and shall contain, but are not limited to, the following information:

- (1) The agreed total contract charges and full terms of payment thereof.
- (2) The number, nature, time, and extent of lessons contracted for, including:
 - (a) minimum hours of instruction:
 - (i) classroom instruction, including testing

50 hours

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(ii) field instruction	50 hours
(iii) highway behind-the-wheel training	20 hours
(iv) observation (highway behind-the-wheel)	40 hours
	total 160 hours

The hours of instruction may be expressed in credit hours provided the school is accredited by an accrediting agency recognized by the United States Department of Education and the conversion ratio of that accrediting agency is properly used.

- (b) rate for use of school vehicle for a driver's license road test, if an extra charge is made.
- (3) A statement which reads substantially as follows: "This agreement constitutes the entire contract between the school and the student, and any verbal assurances or promises not contained herein shall bind neither the school nor the student."
- (4) A statement which reads as follows: "This school is licensed by the State of North Carolina, Division of Motor Vehicles."
- (5) A statement which reads as follows: "If you, as a student, are unable to settle a dispute with the school, please direct your grievances to the North Carolina Division of Motor Vehicles, Enforcement Section, 1100 New Bern Avenue, Raleigh, North Carolina 27697-0001."

*History Note: Statutory Authority G.S. 20-320 through 20-328;
Eff. May 1, 1987;
Amended Eff. February 1, 1991; May 1, 1990.*

SECTION .0700 - BONDING AND ADVERTISING

.0701 BONDS

Prior to license approval, a school shall file with the Division a continuous "cash" or "surety" bond written by a company licensed to do business in North Carolina to indemnify any student against loss or damage arising out of the school's breach of contract between the school and the student. This bond shall be in an amount as set forth in Rule .0201(f) of these Regulations.

*History Note: Statutory Authority G.S. 20-320 through 20-328;
Eff. May 1, 1987;
Amended Eff. February 1, 1991.*

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Hazardous Waste Management Commission

4 NCAC 18 .0309 - Final Site

ARRC Objection 1/18/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

15A NCAC 16A .0804 - Financial Eligibility

ARRC Objection 1/18/91

15A NCAC 16A .0806 - Billing the HIV Health Services Program

ARRC Objection 1/18/91

Coastal Management

15A NCAC 7J .0409 - Civil Penalties

ARRC Objection 1/18/91

15A NCAC 7J .1109 - Permit Fee

ARRC Objection 1/18/91

Environmental Health

15A NCAC 18C .0102 - Definitions

ARRC Objection 10/18/90

15A NCAC 18C .1532 - Variances and Exemptions

ARRC Objection 10/18/90

15A NCAC 18C .1534 - Max Contaminant Levels for Coliform Bacteria

ARRC Objection 10/18/90

15A NCAC 18C .2001 - General Requirements

ARRC Objection 10/18/90

15A NCAC 18C .2002 - Disinfection

ARRC Objection 10/18/90

15A NCAC 18C .2003 - Filtration

ARRC Objection 10/18/90

15A NCAC 18C .2004 - Analytical and Monitoring Requirements

ARRC Objection 10/18/90

15A NCAC 18C .2005 - Criteria for Avoiding Filtration

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This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 1B .0202(c) - REQUEST FOR DETERMINATION

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *New Hanover Memorial Hospital, Inc., Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0792).

10 NCAC 1B .0202(c) - REQUEST FOR DETERMINATION

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *High Point Regional Hospital, Inc., Petitioner v. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0770).

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DHR 0296).

10 NCAC 3R .0317(g) - WITHDRAWAL OF CERTIFICATE

Michael Rivers Morgan, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Autumn Corporation, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0321 and 90 DHR 0318).

10 NCAC 26I .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals per, Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. _____ (1990)].

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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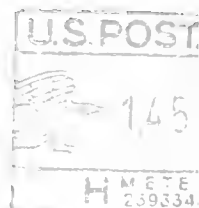
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